Zeigler North Riverside, LLC d/b/a Zeigler Ford of North Riverside *and* Zeigler Lincolnwood d/b/a Zeigler Buick GMC of Lincolnwood & Cadillac of Lincolnwood *and* Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL–CIO. Cases 13–CA–225984, 13–CA–230635, 13–CA–233695, 13–CA–233700, and 13–CA–235867

November 3, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On September 5, 2019, Administrative Law Judge Charles J. Muhl issued the attached decision. The Respondent filed exceptions and a supporting brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the judge's recommended Order as modified and set forth in full below.[4]

This case involves allegations that Respondent Zeigler Lincolnwood d/b/a Zeigler Buick GMC of Lincolnwood & Cadillac of Lincolnwood (Lincolnwood) violated Section 8(a)(3) and (1) of the Act by constructively discharging automotive technicians Mark Galuski and Carlos Martinez, who resigned after Lincolnwood, by word and deed, conveyed the message that it was repudiating the Union while unlawfully implementing unilateral changes to the technicians' wages and healthcare benefits. The judge found that Lincolnwood constructively discharged the employees by confronting them with a "Hobson's choice" between abandoning their Section 7 rights and resigning. We adopt the judge's constructive discharge finding, but we do so for the reasons set forth below.

A. Facts

The relevant facts, set forth in greater detail in the judge's decision, are as follows. On February 28, 2018,[5] Lincolnwood acquired Grossinger Auto Group (Grossinger). Lincolnwood hired Grossinger's former employees as a majority of its work force, including automotive technicians represented by Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL–CIO (the Union), and it continued to operate the dealership in basically unchanged form. Lincolnwood did not set initial terms and conditions of employment for the technicians that differed from those contained in the collective-bargaining agreement between Grossinger and the Union.[6]

[1] The General Counsel's answering brief, cross-exceptions, and brief in support of cross-exceptions were rejected as untimely.

[2] In the absence of exceptions, we adopt the judge's findings that Respondent Zeigler Lincolnwood (1) violated Sec. 8(a)(1) of the Act in August 2018 by telling employees it was no longer a union shop and they needed to get on board with that, and (2) violated Sec. 8(a)(5) of the Act (a) by implementing its last, best, and final offer changing employees' terms and conditions of employment on about July 23, 2018, without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement, and (b) by bypassing the Union and dealing directly with bargaining-unit employees in July 2018 when it entered into individual employment contracts with them.

Also, in the absence of exceptions, we adopt the judge's findings that Respondent Zeigler North Riverside violated Sec. 8(a)(1) of the Act in the fall of 2018 by telling employees that (a) if they did not ratify Zeigler North Riverside's contract proposal, it would unilaterally implement the proposal, and if they went on strike, it would no longer talk to the Union and would replace the employees; (b) the Zeigler Lincolnwood dealership was no longer union because the technicians voted the union out; and (c) Zeigler North Riverside was going to be a nonunion shop moving forward, then offering employees enhanced benefits to stay. In the absence of exceptions, we also adopt the judge's finding that Respondent Zeigler North Riverside violated Sec. 8(a)(5) of the Act in June and August 2018 by unilaterally changing employees' terms and conditions of employment, including their pay period, hours worked for wheel alignments, approval of vacation requests by seniority, and by installing surveillance cameras and, further, adopt the judge's dismissal of the complaint allegation that Respondent Zeigler North Riverside failed and refused to bargain in good faith from September 6 to December 6, 2018.

Finally, in the absence of exceptions, we adopt the judge's findings that Respondent Zeigler Lincolnwood and Respondent Zeigler North Riverside (1) violated Sec. 8(a)(5) and 8(d) of the Act on December 10, 2018, by refusing to execute written contracts, after the Union requested they do so, reflecting the collective-bargaining agreements reached by the parties on December 6, 2018, and (2) violated Sec. 8(a)(5) of the Act on December 7, 2018, by unilaterally revoking the Union's access to both facilities going forward.

We clarify that the Respondent's violations of Sec. 8(a)(3) and (5) derivatively violated Sec. 8(a)(1) as alleged in the consolidated complaint but not expressly stated by the judge in his conclusions of law. *Bemis Co*., 370 NLRB No. 7, slip op. at 1 fn. 3 (2020); see also *Altura Communication Solutions, LLC*, 369 NLRB No. 85, slip op. at 51 fn. 49 (2020) (an employer's violation of Sec. 8(a)(5) is also a derivative violation of Sec. 8(a)(1)); *Napleton 1050, Inc. d/b/a Napleton Cadillac of Libertyville,* 367 NLRB No. 6, slip op. at 14 (2018) (conduct found to be a violation of Sec. 8(a)(3) would also discourage employees from exercising their Sec. 7 rights and be a derivative violation of Sec. 8(a)(1)), enfd. __F.3d__, 2020 WL 5905126 (D.C. Cir. Oct. 6, 2020).

[3] We have amended the Conclusions of Law to conform to our findings and to include the derivative Sec. 8(a)(1) violations.

[4] We have amended the judge's recommended Order to conform to standard language. We have also modified the recommended Order in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020), and we shall substitute a new notice to conform to the Order as modified.

[5] All dates are in 2018 unless otherwise noted.

[6] Indeed, the parties stipulated that Lincolnwood was a perfectly clear successor to Grossinger and could not set initial terms and conditions of employment that differed from its predecessor's.

Thus, while Lincolnwood did not adopt its predecessor's collective-bargaining agreement, the terms of that agreement constituted the technicians' status quo terms and conditions of employment at the outset of Lincolnwood's operations.

In March, Lincolnwood and the Union met to bargain for an initial collective-bargaining agreement covering the technicians. The Union sought to continue the terms of the Grossinger collective-bargaining agreement—i.e., the status quo—which, as relevant here, contained a base-pay guarantee of 35 hours of pay per week even if a technician "booked" or worked fewer than 35 hours servicing vehicles, and which provided cost-free health insurance offered through the Union to most unit employees.[7] The parties also met and bargained on April 4 and June 6.

On or around June 25, Martinez complained to Lincolnwood Service Director Robbie Long that he was not getting the vacation time he was seeking. Martinez asserted that under the collective-bargaining agreement, his seniority gave his request for vacation time priority over that of a less senior technician. Long responded that the company was "not a union shop anymore" and that she "did not give a fuck about the . . . [U]nion."

On July 10, Lincolnwood emailed the Union its last, best, and final offer and declared impasse.[8] Lincolnwood's final offer eliminated the base-pay guarantee and replaced Union-provided health insurance with company health insurance. Under Lincolnwood's healthcare plans, premiums ranged from $278.66 to $1041.67 per month, depending on the coverage selected, and deductibles were also dramatically higher under Lincolnwood's plans than under the Union's plan.[9] After Lincolnwood sent the Union the final offer, it learned that it had not received a July 6 email in which the Union had agreed to forgo the base-pay guarantee.

On July 12, Lincolnwood's president, Aaron Zeigler, told technicians (including Galuski and Martinez) about the planned elimination of the base-pay guarantee and union health insurance. He also said he would not negotiate further with the Union and that Lincolnwood was no longer going to be a union shop.

On July 20, 24, and 30, Lincolnwood entered into individual employment contracts with four employees in the bargaining unit.

On or around July 23, Lincolnwood implemented its final offer, including the elimination of the base-pay guarantee, and subsequently replaced union health insurance with company health insurance. As a result of Lincolnwood's elimination of the base-pay guarantee, both Galuski and Martinez experienced a significant reduction in earnings. Before that July 23 change, Galuski earned $2443 and Martinez $2331 in biweekly gross pay when they were paid the guaranteed base-pay amount in both weeks of the pay period. After July 23, Galuski's pay decreased to as little as $516.96 for 1 week,[10] and Martinez' decreased to as little as $579.67 for a 2-week pay period.[11]

The parties resumed negotiations in early August. Around that time, Union representatives visited the Lincolnwood dealership seeking to sign up new employees to join the Union. After the representatives left the dealership, Service Director Long told Galuski, "We're no longer a union shop and you need to get on board with that."

Galuski resigned on August 17, and Martinez resigned on November 2. Among the reasons Galuski cited for deciding to quit was his feeling that there was a target on his back because he was the shop steward. Galuski also testified that the "biggest issue" was the employment contracts Lincolnwood had entered into with individual technicians.

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[7] Employees hired after December 8, 2017, were required to contribute $10 per week.

[8] It is undisputed that the parties had not reached a valid impasse in bargaining. See supra fn. 2.

[9] Monthly premiums under Lincolnwood's plan ranged from $278.66 to $347.23 for employee-only coverage and from $835.94 to $1041.67 for family coverage. As for deductibles, under the Union's plan individuals had a $250 deductible and families a $500 deductible. Lincolnwood offered two health insurance plans. Under one of them, individuals had a $5000 deductible and families a $10,000 deductible for in-network care, and individuals had a $10,000 deductible and families a $20,000 deductible for out-of-network care. Under the other Lincolnwood plan, individuals had a $4000 deductible and families an $8000 deductible for in-network care, and individuals had an $8000 deductible and families a $16,000 deductible for out-of-network care.

[10] Before the change, Galuski earned $1221.50 per week in gross pay when he was paid the base-pay guarantee. In the first week after the guarantee was eliminated (the second week of a 2-week pay period), Galuski earned $1188.29, 2.7 percent less than he would have earned under the guarantee. In the one full pay period Galuski worked after the change, he earned $2225.46, 8.9 percent less than under the guarantee. Finally, in Galuski's last week (the first week of the pay period), Galuski earned $516.96, 57.6 percent less than under the guarantee.

[11] In the first week after the change was implemented, Martinez earned $770.56, 33.8 percent less than under the guarantee. Subsequently, Martinez' pay per 2-week pay period ranged from $579.67 to $1927.66. On average, Martinez' pay per pay period was 41.2 percent lower after the change.

The base-pay guarantee was eliminated in the middle of a 2-week pay period—i.e., week 2 of the pay period was the first week without the base-pay guarantee. In that pay period, Galuski earned $2444.79, slightly more than the $2443 he would have earned under a straight base-pay guarantee. This was because he earned $1256.60 in the first week of that pay period. The record confirms that in each pay period after the change, Galuski and Martinez earned less than what they typically earned before the change. Accordingly, although Lincolnwood claims that "one of the technicians did not experience a decrease in pay" after the change, that assertion does not apply to Galuski or Martinez.

Galuski also cited financial losses resulting from Lincolnwood's unlawful unilateral changes, as did Martinez.[12]

In the fall, negotiations with Lincolnwood were merged with negotiations between the Union and Respondent Zeigler North Riverside, LLC d/b/a Zeigler Ford of North Riverside (North Riverside).[13] In late November, the Union agreed that employees would have health insurance under the company plans. In December, both Respondents revoked the Union's access to their facilities and refused to execute ratified collective-bargaining agreements when requested by the Union to do so. In April 2019, 2 weeks before the scheduled start of the hearing in this case, the Respondents signed the collective-bargaining agreements. The Lincolnwood agreement did not contain a base-pay guarantee and provided company health insurance rather than union health insurance.

The judge found that "Galuski and Martinez were presented with the Hobson's choice of continuing to work with a reduction in pay and increased health costs from the violation of their Section 7 rights or to resign their employment." For that reason, the judge found that Lincolnwood constructively discharged Galuski and Martinez. As explained below, we agree with the judge's constructive discharge finding. In doing so, however, we rely on Lincolnwood's statements as well as its actions, including its unilateral elimination of the base-pay guarantee and imposition of company health insurance. Through its statements and actions, Lincolnwood communicated that it was no longer a union shop. Taken as a whole, the evidence persuades us that Galuski and Martinez were confronted with a choice between abandoning their Section 7 rights to collective-bargaining representation and resigning their employment with Lincolnwood. Accordingly, we find that they were constructively discharged.

B. Discussion

A constructive discharge "is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surround it." *Remodeling by Oltmanns*, 263 NLRB 1152, 1161 (1982), enfd. 719 F.2d 1420 (8th Cir. 1983). Under a Hobson's choice theory of constructive discharge, an employer confronts an employee with a choice between resignation on the one hand and continued employment conditioned on relinquishment of rights guaranteed by Section 7 of the Act on the other. See *Mercy Hospital*, 366 NLRB No. 165, slip op. at 4 (2018) ("[T]here are two elements to a Hobson's Choice constructive discharge: conditioning continued employment on the abandonment of Section 7 rights, and a quit that results from the imposition of that condition."). In determining whether an employee has been presented with a Hobson's choice, the Board views the circumstances from the employee's perspective. See *Intercon I (Zercom)*, 333 NLRB 223, 224 (2001).

Additionally, to establish that a constructive discharge violates Section 8(a)(3) of the Act, the General Counsel must show that the employer's discriminatory conduct was motivated by antiunion animus. *Lively Electric, Inc.*, 316 NLRB 471, 472 (1995); *Electric Machinery Co. v. NLRB*, 653 F.2d 958 (5th Cir. 1981). No independent proof of antiunion motive is required, however, where an employer's conduct is inherently destructive of Section 7 rights. *Lively Electric*, supra. This is clearly the case where the employer withdraws recognition from the union and makes unilateral changes, *Electric Machinery*, 653 F.2d at 965, but the Board has held that withdrawal of recognition is not essential to an 8(a)(3) Hobson's choice constructive discharge finding. See *Lively Electric*, 316 NLRB at 472 ("To be sure, in some of our recent cases, we have found constructive discharge in the absence of express total repudiation of the employees' bargaining representative . . . .") (citing *RCR Sportswear*, 312 NLRB 513 (1993), enfd. 37 F.3d 1488 (3d Cir. 1994)); *Control Services*, 303 NLRB 481 (1991), enfd. 961 F.2d 1568 (3d Cir. 1992)).[14]

Applying these principles here, we find that Lincolnwood constructively discharged Galuski and Martinez under the Hobson's choice theory by causing them to reasonably believe that they had to choose between surrendering their Section 7 rights to union representation and quitting.

[12] Galuski testified he faced increased insurance costs, and the judge found that Martinez lost his union health insurance in August. Another witness testified, however, that while the company had stopped paying for union insurance by mid-September, union insurance was still in effect at that time. In short, the record is unclear regarding when the switch to the company health plans was implemented.

[13] Aaron Zeigler, the president of Lincolnwood, is also the president of North Riverside.

[14] In *RCR Sportswear*, the employer stopped applying the parties' collective-bargaining agreement and stated that the factory would be nonunion going forward. Employees quit in response. Applying a Hobson's choice theory, the Board found that the employees who quit had been constructively discharged in violation of Sec. 8(a)(3) and (1). 312 NLRB at 513–514. In *Control Services*, the employer violated Sec. 8(a)(5) by unilaterally reducing employees' wages and hours and eliminating their health insurance. Although the employer made these changes in the context of a broader refusal to recognize or negotiate with the union, 303 NLRB at 494, the Board expressly relied solely on the employer's unlawful unilateral changes in finding that the employer constructively discharged employees in violation of Sec. 8(a)(3) and (1). Id. at 485, 495. Noting that employees are not privileged to quit their employment whenever there is a mere breach of a collective-bargaining agreement, the Board in *Lively Electric* stated that *RCR Sportswear* and *Control Services* "probably represent the outer limit for determining that unlawfully imposed conditions are so destructive of important Section 7 rights that no motivation element of Section 8(a)(3)" need be shown. 316 NLRB at 472.

To begin, although Lincolnwood did not withdraw recognition from the Union, it repeatedly conveyed the message to unit employees, through both word and deed, that it was no longer a union shop. Indeed, its representatives expressly said so on numerous occasions. On June 25, Lincolnwood Service Director Long rejected Martinez' effort to invoke his contractual seniority rights, telling him that Lincolnwood was "not a union shop anymore" and that she "did not give a fuck about the . . . [U]nion." Two days after Lincolnwood prematurely declared impasse, at the same time that Aaron Zeigler told the service technicians, including Galuski and Martinez, that the base-pay guarantee and union health insurance would be eliminated, Zeigler stated that he would not negotiate further with the Union because Lincolnwood was no longer going to be a union shop. And in early August, Long told Galuski, "We're no longer a union shop and you need to get on board with that." Galuski and Martinez reasonably understood these statements to interfere with, restrain or coerce them in the exercise of their Section 7 rights, particularly the right to bargain collectively through representatives of their own choosing.

At the same time, Lincolnwood took actions consistent with its message that it was "no longer a union shop." In late July, around the time it unilaterally implemented its final offer, Lincolnwood dealt directly with employees by negotiating individual employment contracts with several of them. And, of course, Lincolnwood unilaterally eliminated the base-pay guarantee and substituted vastly more expensive health insurance plans for the Union's plan.

Lincolnwood's unlawfully implemented unilateral changes, made in the context of Lincolnwood's statements that it either had already repudiated the Union or intended to do so, plus its direct dealing with individual employees, which confirmed those statements, communicated that this restraint and coercion was more than a threat or theoretical. They conveyed to employees that Lincolnwood's interference with their Section 7 rights was permanent and that it was pointless to look to the Union to defend their rights or to negotiate their terms and conditions of employment. As a result, Galuski and Martinez would have reasonably believed that continuing to work at Lincolnwood would have meant surrendering their Section 7 rights. See *Intercon I (Zercom)*, supra. The other option, which they chose, was to quit. Under the circumstances, this was a Hobson's choice constructive discharge. *Mercy Hospital*, supra.

The Board has consistently found constructive discharge under a Hobson's choice theory where, as here, the employer, by word and/or deed, communicated a settled resolve to deny employees their right to union representation, including by unlawfully implementing unilateral changes, and employees quit in response. See, e.g., *Naperville Jeep/Dodge*, 357 NLRB 2252, 2273–2274 (2012) (finding employer constructively discharged two unit employees who resigned after the employer repudiated its collective-bargaining agreement, withdrew recognition from the union, unilaterally eliminated a base-pay guarantee, and unilaterally replaced cost-free health insurance with company insurance), enfd. 796 F.3d 31 (D.C. Cir. 2015); *White-Evans Service Co.*, 285 NLRB 81, 81–82 (1987) (finding constructive discharge where employer "carried out the final steps in its plan to convert to a nonunion operation," including by bargaining directly with employees, making statements that employees' union representation would end when the collective-bargaining agreement expired, and unilaterally changing terms and conditions after agreement expired); *Superior Sprinkler*, 227 NLRB 204, 208–210 (1976) (finding constructive discharge where employees resigned after employer unlawfully terminated relationship with the union and announced an intent to operate nonunion).

The facts of this case are unique because, during the same period when Lincolnwood was making statements and taking actions that were inherently destructive of employees' Section 7 rights, it was also negotiating a new collective-bargaining agreement that, ultimately, contained some of the same terms over which Galuski and Martinez quit. However, it was Lincolnwood's statements, direct dealing with unit employees, and unilateral changes, rather than what happened at the bargaining table, that communicated to Galuski and Martinez the message that continuing to work at Lincolnwood would have meant abandoning their Section 7 rights. Moreover, there is nothing in the record to indicate that Galuski or Martinez were aware of Lincolnwood's continued dealings with the Union, and, even if they were, they had every reason to believe that Lincolnwood's statements, unilateral changes, and cutting of side deals with individual employees revealed the true state of affairs and represented a permanent rejection of the Union. Additionally, the fact that the terms ultimately negotiated were similar to the ones over which both men quit is not relevant to a Hobson's choice constructive discharge analysis, and the final agreement was not reached until well after both Galuski and Martinez had quit in any event. Even then, the Respondent unlawfully refused to execute and abide by that agreement for several more months. Based on these considerations, Lincolnwood's ultimate failure to withdraw recognition from the Union does not alter our conclusion that Lincolnwood's conduct was so inherently destructive

of Section 7 rights that no independent proof of animus is required. *Lively Electric*, supra.[15]

Lincolnwood urges several arguments in its defense, but none is convincing. Lincolnwood contends that *Naperville Jeep/Dodge* is distinguishable because the employer in that case unlawfully withdrew recognition from the union. As we have already addressed, however, withdrawal of recognition is not essential to a Hobson's choice constructive discharge finding. See *Lively Electric*, 316 NLRB at 472. Moreover, Lincolnwood's statements and conduct conveyed the same message as a withdrawal of recognition: it repeatedly told unit employees that it was no longer a union shop, and it drove that message home by cutting side deals with individual employees to the exclusion of the Union. While Lincolnwood contends it did not ultimately reduce employees' wages, this argument is irrelevant because it did unlawfully make unilateral changes to wages while communicating to employees that the Union was no longer in the picture.[16] Finally, Lincolnwood claims that the cost of its company health insurance reflects a reasonable market rate. This argument likewise misses the point, which is that Lincolnwood substituted company health plans for the Union plan without bargaining to a valid impasse, further cementing the reasonable impression that continuing to work at Lincolnwood meant abandoning the right to bargain collectively.[17]

Based on the foregoing, we adopt the judge's conclusion, as amended above,[18] that Lincolnwood violated Section 8(a)(3) and (1) of the Act.

On a remedial matter, Lincolnwood asserts that a reinstatement remedy is inappropriate because the discriminatees would return to work under the same conditions that caused them to quit. (As noted above, Lincolnwood and the Union ultimately reached a collective-bargaining agreement that eliminated the base-pay guarantee and increased employees' health insurance costs.) We disagree. As fully set forth above, Galuski and Martinez were constructively discharged under conditions unilaterally imposed by the Respondent and at a time when its agents repeatedly indicated that the union would no longer have a meaningful role as employees' collective-bargaining representative. An offer of reinstatement is a standard remedy for employees who have been constructively discharged,[19] and Lincolnwood cites no authority for the proposition that Galuski and Martinez should not be offered reinstatement because the subsequently negotiated pay and health insurance terms are the same as those that the Respondent previously imposed unlawfully. One or the other or both of them may choose to turn down the offer, but they are entitled to return to work at Lincolnwood if they so desire.

AMENDED CONCLUSIONS OF LAW

1. Respondents Zeigler Lincolnwood and Zeigler North Riverside are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is, and at all material times was, the exclusive collective-bargaining representative of the following appropriate unit at the Lincolnwood, Illinois facility of Zeigler Lincolnwood:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

4. The Union is, and at all material times was, the exclusive collective-bargaining representative of the following appropriate unit at the North Riverside, Illinois facility of Zeigler North Riverside:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

5. Respondent Zeigler Lincolnwood violated Section 8(a)(1) in August 2018 by telling employees it was no longer a union shop and they needed to get on board with that.

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[15] Although no independent proof of animus is necessary, Lincolnwood's antiunion animus is further evidenced by its conduct after Galuski and Martinez resigned. Specifically, in December, Lincolnwood and North Riverside unilaterally revoked the Union's access to the premises and unlawfully delayed executing a collective-bargaining agreement.

[16] Lincolnwood similarly attempts to blame Martinez for the pay cut he suffered, ignoring the fact that he would not have suffered a pay cut had Lincolnwood not unilaterally eliminated the base-pay guarantee.

Also, because Lincolnwood did effectively cut employees' wages, we reject its claim that this case is distinguishable from *Dish Network*, 366 NLRB No. 119 (2018), enf. denied in part 953 F.3d 370 (5th Cir. 2020), relied on by the judge. In *Dish Network*, the Board found constructive discharges based on unilaterally imposed conditions of employment. The Fifth Circuit held, contrary to the Board, that the parties were at impasse and thus rejected the Board's finding that the employer's implementation of its final offer was unlawful. *Dish Network Corp. v. NLRB*, 953 F.3d at 381. The court then rejected the Board's constructive discharge finding because it rested on the unlawful implementation finding. Id. The court found it unnecessary to consider whether the Board's reliance on a Hobson's choice theory of constructive discharge was proper. Id. at 381 fn. 8.

[17] Lincolnwood also claims that there is a high demand for auto technicians, but this is once again irrelevant to determining whether employees were presented with a Hobson's choice.

[18] See footnotes 2 & 3, supra.

[19] See *Dish Network*, 366 NLRB No. 119, slip op. at 12; *Naperville Jeep/Dodge*, 357 NLRB at 2260; *Control Services*, 303 NLRB at 487.

6. Respondent Zeigler North Riverside violated Section 8(a)(1) in the fall of 2018 by telling employees:

a. if they did not ratify Zeigler North Riverside's contract proposal, it would unilaterally implement the proposal and, if they went on strike, it would no longer talk to the Union and would replace the employees.

b. the Zeigler Lincolnwood dealership was no longer union because the technicians voted the union out.

c. Zeigler North Riverside was going to be a nonunion shop moving forward, then offering employees enhanced benefits to stay.

7. Respondent Zeigler Lincolnwood violated Section 8(a)(3) and (1) by constructively discharging Mark Galuski and Carlos Martinez.

8. Respondent Zeigler Lincolnwood violated Section 8(a)(5) and (1) by implementing its last, best, and final offer and unilaterally changing employees' terms and conditions of employment about July 23, 2018, without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

9. Respondent Zeigler Lincolnwood violated Section 8(a)(5) and (1) in July 2018 by bypassing the Union and dealing directly with bargaining-unit employees when it entered into individual employment contracts with them.

10. Respondent Zeigler North Riverside violated Section 8(a)(5) and (1) in June and August 2018 by unilaterally changing employees' terms and conditions of employment, including their pay period, hours worked for wheel alignments, approval of vacation requests by seniority, and the installation of surveillance cameras, without providing the Union with notice of or an opportunity to bargain over the changes.

11. Respondent Zeigler Lincolnwood and Respondent Zeigler North Riverside violated Section 8(a)(5) and (1) and 8(d) on December 10, 2018, by refusing to execute written contracts, after the Union requested they do so, reflecting the complete agreements reached by the parties on December 6, 2018.

12. Respondent Zeigler Lincolnwood and Respondent Zeigler North Riverside violated Section 8(a)(5) and (1) on December 7, 2018, by unilaterally revoking the Union's access to both facilities going forward.

13. The above unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

14. Neither Respondent has violated the Act in any other manner alleged in the complaint.

ORDER

A. Respondent Zeigler Lincolnwood d/b/a Zeigler Buick GMC of Lincolnwood & Cadillac of Lincolnwood, Lincolnwood, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees by telling them the dealership is no longer a union shop.

(b) Constructively discharging unit employees by confronting them with a choice between abandoning their Section 7 rights and resigning their employment.

(c) Changing bargaining-unit employees' terms and conditions of employment without first bargaining with Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL–CIO (the Union) to an overall good-faith impasse for a collective-bargaining agreement.

(d) Bypassing the Union and dealing directly with bargaining-unit employees by entering into individual employment contracts with them.

(e) Refusing to execute a written contract incorporating the parties' collective-bargaining agreement when requested by the Union to do so.

(f) Unilaterally revoking the Union's access to the dealership.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Mark Galuski and Carlos Martinez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Mark Galuski and Carlos Martinez whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus reasonable search-for-work and interim employment expenses, in the manner set forth in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful constructive discharges of Mark Galuski and Carlos Martinez, and within 3 days thereafter, notify them in writing that this has been done and that these unlawful acts will not be used against them in any way.

(d) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack

technicians, part time express team technicians and semi-skilled technicians.

(e) Upon the Union's request, restore the bargaining-unit employees' terms and conditions of employment to the status quo that existed prior to the implementation of the last, best, and final offer on or about July 23, 2018, and continue them in effect until the parties reach an agreement or a good-faith impasse in bargaining.

(f) Make its unit employees whole for any loss of earnings and other benefits suffered as a result of the unlawful changes in their terms and conditions of employment on or about July 23, 2018, and thereafter, in the manner set forth in the remedy section of the judge's decision.

(g) Make all contractually required contributions to the Union's welfare and pension funds that it has failed to make since about July 23, 2018, if any, and reimburse affected employees for any expenses ensuing from its failure to make the required payments, as set forth in the remedy section of the judge's decision.

(h) Make all affected unit employees whole, in the manner set forth in the remedy section of the judge's decision, for any loss of earnings or other benefits resulting from the failure to sign and honor the collective-bargaining agreement reached with the Union on December 6, 2018.

(i) Restore the Union's access to Zeigler Lincolnwood that existed prior to the unilateral changes implemented on December 7, 2018.

(j) Compensate Mark Galuski, Carlos Martinez, and all other affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, allocating the backpay awards to the appropriate calendar years for each affected employee.

(k) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(l) Post at its facility in Lincolnwood, Illinois, copies of the attached notice marked "Appendix A."[20] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Zeigler Lincolnwood's authorized representative, shall be posted by Zeigler Lincolnwood and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Zeigler Lincolnwood customarily communicates with its employees by such means. Reasonable steps shall be taken by Zeigler Lincolnwood to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Zeigler Lincolnwood has gone out of business or closed the facility involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Zeigler Lincolnwood at any time since July 20, 2018.

(m) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent Zeigler Lincolnwood has taken to comply.

B. Respondent Zeigler North Riverside, LLC d/b/a Zeigler Ford of North Riverside, North Riverside, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees by telling them

i. if they did not ratify the dealership's contract proposal, it would unilaterally implement the proposal, and if they went on strike, it would no longer talk to Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL–CIO (the Union) and would replace the employees;

ii. the Zeigler Lincolnwood dealership was no longer union because the technicians voted the union out;

iii. the dealership was going to be a nonunion shop moving forward.

(b) Offering employees enhanced benefits to induce them to remain with Zeigler North Riverside after telling employees the dealership was going to be a nonunion shop.

[20] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Changing unit employees' terms and conditions of employment without providing the Union with reasonable advance notice of and opportunity to bargain over proposed changes.

(d) Refusing to execute a written contract incorporating the parties' collective-bargaining agreement when requested by the Union to do so.

(e) Unilaterally revoking the Union's access to the dealership.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

(b) At the Union's request, rescind the unilateral changes made to the unit employees' terms and conditions of employment, including to their pay period, hours worked for wheel alignments, approval of vacation requests by seniority, and by installing surveillance cameras.

(c) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of the unlawful unilateral changes in terms and conditions of employment on and after June 25, 2018, in the manner set forth in the remedy section of the judge's decision.

(d) Make all affected employees whole, in the manner set forth in the remedy section of the judge's decision, for any loss of earnings or other benefits resulting from the failure to sign and honor the collective-bargaining agreement reached with the Union on December 6, 2018.

(e) Restore the Union's access to Zeigler North Riverside that existed prior to the unilateral changes implemented on December 7, 2018.

(f) Compensate all affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, allocating the backpay awards to the appropriate calendar years for each affected employee.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its facility in North Riverside, Illinois, copies of the attached notice marked "Appendix B."[21] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Respondent Zeigler North Riverside's authorized representative, shall be posted by Respondent Zeigler North Riverside and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent Zeigler North Riverside customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent Zeigler North Riverside to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Zeigler North Riverside has gone out of business or closed the facility involved in these proceedings, Respondent Zeigler North Riverside shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Zeigler North Riverside at any time since June 25, 2018.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent Zeigler North Riverside has taken to comply.

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[21] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. November 3, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees by telling them the dealership is no longer a union shop.

WE WILL NOT constructively discharge unit employees by confronting them with a choice between abandoning their Section 7 rights and resigning their employment.

WE WILL NOT change unit employees' terms and conditions of employment without first bargaining with Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL–CIO (the Union) to an overall good-faith impasse for a collective-bargaining agreement.

WE WILL NOT bypass the Union and deal directly with unit employees by entering into individual employment contracts with them.

WE WILL NOT refuse to execute a written contract incorporating a collective-bargaining agreement reached by and between us and the Union when the Union requests that we do so.

WE WILL NOT unilaterally revoke the Union's access to the dealership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's order, offer Mark Galuski and Carlos Martinez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they previously enjoyed.

WE WILL make Mark Galuski and Carlos Martinez whole for any loss of earnings and other benefits suffered as a result of our constructive discharges of them, less any net interim earnings, plus interest, and WE WILL also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL, within 14 days from the date of the Board's order, remove from our files all references to the unlawful constructive discharges of Mark Galuski and Carlos Martinez, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that these unlawful acts will not be used against them in any way.

WE WILL notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

WE WILL, at the Union's request, restore the unit employees' terms and conditions of employment to the status quo that existed prior to our unlawful implementation of the last, best, and final offer on or about July 23, 2018, and WE WILL continue those terms and conditions in effect until we reach an agreement with the Union or a good-faith impasse in bargaining.

WE WILL make our unit employees' whole, with interest, for any losses suffered as a result of our unlawful changes in their terms and conditions of employment on or about July 23, 2018, and thereafter.

WE WILL make all contractually required contributions to the Union's welfare and pension funds that we have failed to make since about July 23, 2018, if any, and WE WILL reimburse affected employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL make all affected employees whole, with interest, for any loss of earnings or other benefits resulting

from our failure to sign and honor the collective-bargaining agreement reached with the Union on December 6, 2018.

WE WILL restore the Union's access to Zeigler Lincolnwood that existed prior to our unlawful unilateral changes implemented on December 7, 2018.

ZEIGLER LINCOLNWOOD D/B/A ZEIGLER BUICK GMC OF LINCOLNWOOD & CADILLAC OF LINCOLNWOOD

The Board's decision can be found at www.nlrb.gov/case/13-CA-225984 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten our unit employees by telling them

- if they do not ratify our contract proposal, we will unilaterally implement the proposal, and if they go on strike, we will no longer talk to Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL–CIO (the Union) and we will replace the employees;
- the Zeigler Lincolnwood dealership was no longer union because the technicians voted the union out;
- we are going to be a nonunion shop moving forward.

WE WILL NOT, after telling you that we are going to be a nonunion shop, offer you enhanced benefits to induce you to remain with us.

WE WILL NOT change unit employees' terms and conditions of employment without providing the Union reasonable advance notice of and opportunity to bargain over proposed changes.

WE WILL NOT refuse to execute a written contract incorporating a collective-bargaining agreement reached by and between us and the Union when the Union requests that we do so.

WE WILL NOT unilaterally revoke the Union's access to the dealership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees:

All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

WE WILL, at the Union's request, rescind the unilateral changes we made to your terms and conditions of employment on or after June 25, 2018, including to your pay period, hours worked for wheel alignments, approval of vacation requests by seniority, and by installing surveillance cameras.

WE WILL make you whole, with interest, for any losses you suffered as a result of the unlawful changes in terms and conditions of employment we made on and after June 25, 2018.

WE WILL make all affected employees whole, with interest, for any loss of earnings or other benefits resulting from our failure to sign and honor the collective-bargaining agreement reached with the Union on December 6, 2018.

WE WILL restore the Union's access to Zeigler North Riverside that existed prior to our unlawful unilateral changes implemented on December 7, 2018.

ZEIGLER NORTH RIVERSIDE, LLC D/B/A ZEIGLER FORD OF NORTH RIVERSIDE

The Board's decision can be found at www.nlrb.gov/case/13-CA-225984 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Christina Hill, Esq., for the General Counsel.
James F. Hendricks, Jr., Esq. (Leech Tishman Fuscaldo & Lampl), of Oak Brook, Illinois for the Respondent.
Rick Mickschl (International Association of Machinists and Aerospace Workers), of Joliet, Illinois for the Charging Party.

DECISION

CHARLES J. MUHL, Administrative Law Judge. A perfectly-clear successor's bargaining obligation under the National Labor Relations Act is to maintain the status quo conditions of employment under the predecessor, until it bargains to agreement or impasse with the representative union over terms of a new collective-bargaining agreement for the successor work force. In 2018, the Zeigler Auto Group purchased auto dealerships located in Lincolnwood and North Riverside, Illinois. At the time of the purchases, auto technicians at both dealerships were represented by Machinists Local 701 and were covered by existing collective-bargaining agreements. When taking over, Zeigler Lincolnwood and Zeigler North Riverside admittedly were perfectly-clear successors and were required to maintain the statusquo working conditions. The General Counsel's complaint principally alleges that Zeigler Lincolnwood violated Section 8(a)(5) by prematurely declaring impasse and implementing its last, best, and final offer, which changed the technicians' health insurance and retirement benefits and eliminated their weekly guaranteed minimum pay. The complaint also alleges that Zeigler North Riverside made numerous unlawful unilateral changes to its technicians' working conditions, most of which occurred even before bargaining for that dealership began. Finally, the complaint alleges that, once the parties reached agreement on a contract which would apply at both dealerships, President Aaron Zeigler unlawfully refused to sign the agreements. I conclude the record evidence establishes all of these alleged violations.

STATEMENT OF THE CASE

On August 21, 2018, Local Lodge 701 of the International Association of Machinists and Aerospace Workers, AFL–CIO (the Union or Machinists Local 701) initiated this case by filing the original unfair labor practice charge in Case 13–CA–225984 against Zeigler Lincolnwood d/b/a Zeigler Buick GMC of Lincolnwood and Zeigler Cadillac of Lincolnwood (Zeigler Lincolnwood). On October 30, 2018, the Union filed a first amended charge against Zeigler Lincolnwood in Case 13–CA–225984. On November 6, 2018, the Union filed an original unfair labor practice charge in Case 13–CA–230635 against Zeigler North Riverside, LLC d/b/a Ziegler Ford of North Riverside (Zeigler North Riverside). Thereafter, the Union filed these new or amended charges:

DATE	CASE NUMBER	CHARGE	RESPONDENT
November 29, 2018	13–CA–230635	First amended	Zeigler North Riverside
January 8, 2019	13–CA–233700	Original	Zeigler North Riverside
January 8, 2019	13–CA–233695	Original	Zeigler Lincolnwood

On January 9, 2019, the General Counsel, through the Regional Director for Region 13 of the National Labor Relations Board (the Board), issued a complaint against Zeigler Lincolnwood in Case 13–CA–225984. Subsequent to the complaint issuing, the Union filed these new or amended charges:

DATE	CASE NUMBER	CHARGE	RESPONDENT
February 13, 2019	13–CA–235867	Original	Zeigler Lincolnwood
February 20, 2019	13–CA–230635	Second amended	Zeigler North Riverside

On March 1, 2019, the General Counsel issued a consolidated complaint against both Zeigler Lincolnwood and Zeigler North Riverside (collectively, the Respondents) in Cases 13–CA–225984, 13–CA–230635, 13–CA–233695, and 13–CA–233700. On March 13, 2019, the Respondents filed a timely answer to the consolidated complaint. On March 26, 2019, the General Counsel issued a second consolidated complaint, adding Case 13–CA–235867 to the previously consolidated cases. On April 9, 2019, the Respondents filed a timely answer. The second consolidated complaint alleges the Respondents violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act) in numerous manners during bargaining for collective-bargaining agreements between the Union and each respondent. On April 22 and 23, 2019, in Chicago, Illinois, I conducted a trial on

the complaint.[1] On June 11, 2019, the General Counsel and the Respondents filed posthearing briefs. On the entire record and after considering those briefs, I make the following findings of fact and conclusions of law.[2]

FINDINGS OF FACT

I. JURISDICTION, LABOR ORGANIZATION STATUS, AND SUCCESSORSHIP

Respondent Zeigler Lincolnwood is an auto dealership engaged in the retail sale and service of new and used vehicles, from its facility in Lincolnwood, Illinois. In conducting its business operations during the 12-month period ending December 31, 2018, Respondent Zeigler Lincolnwood derived gross revenues in excess of $500,000, as well as purchased and received goods and materials valued in excess of $5000 directly from points outside the State of Illinois. Respondent Zeigler North Riverside likewise is an auto dealership engaged in the retail sale and service of new and used vehicles, from its facility in North Riverside, Illinois. In conducting its business operations during the 12-month period ending December 31, 2018, Respondent Zeigler North Riverside derived gross revenues in excess of $500,000, as well as purchased and received goods and materials valued in excess of $5000 directly from points outside the State of Illinois. Accordingly, I find, as the Respondents admit, that Zeigler Lincolnwood and Zeigler North Riverside are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also find, as the Respondents admit, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

On February 28, 2018, Respondent Zeigler Lincolnwood purchased the business of Grossinger Auto Group (Grossinger). Since then, Zeigler Lincolnwood has continued to operate the business of Grossinger in basically unchanged form. It also has employed, as a majority of its employees, individuals who were previously employed by Grossinger. As a result, Zeigler Lincolnwood has continued as the employing entity and is a perfectly-clear successor to Grossinger, including as to its collective-bargaining obligations with the Union. On June 5, 2018, Respondent Zeigler North Riverside purchased the business of McCarthy Ford (McCarthy). Since then, Zeigler North Riverside has continued to operate the business of McCarthy in basically unchanged form. It also has employed, as a majority of its employees, individuals who were previously employed by McCarthy. As a result, Zeigler North Riverside has continued as the employing entity and is a perfectly-clear successor to McCarthy, including as to its collective-bargaining obligations with the Union.[3]

II. ALLEGED UNFAIR LABOR PRACTICES

Machinists Local 701 represents technicians at numerous auto dealerships in the Chicago metropolitan area. The Union and the New Car Dealer Committee, a multiemployer bargaining group, have negotiated a standard automotive collective-bargaining agreement, to which approximately 135 dealerships are signatories. The latest standard agreement runs from August 1, 2017 to August 31, 2021. Going back 65 years, the Union represented a bargaining unit of technicians at the Grossinger Auto Dealership in Lincolnwood, Illinois. Grossinger was under the standard automotive agreement during that entire time, except for its last contract which it negotiated on its own with the Union. At times material to this case, Robert Lessman was the senior business representative for the Union. His job duties included negotiating most of the contracts in the auto sector. Lessman had held that position since October 2003.

In February 2018, Lessman received a letter from an attorney representing Grossinger informing the Union that the dealership was going to be sold to the Zeigler Auto Group.[4] The sale was completed on February 28. At Zeigler Lincolnwood, Aaron Zeigler is the president and Robbie Long is the service director.

A. Bargaining for an Initial Contract Between Zeigler Lincolnwood and the Union

After learning of the dealership's change in ownership, Lessman reached out to James Hendricks, an attorney whom he had known for about 30 years and who previously had done some work for Zeigler. Hendricks advised Lessman he was representing Zeigler Lincolnwood. The two agreed to meet on March 29 to begin negotiations for a collective-bargaining agreement. At the first session, Lessman was joined by Anthony Albergo, the servicing business representative for the dealership, and Mark Galuski, an employee and union steward. Hendricks was the only representative for Zeigler Lincolnwood. He remained the lone representative throughout negotiations.

During bargaining on March 29, the Union passed the last Grossinger contract and proposed that Zeigler continue its terms. The Grossinger contract/proposal included a "base pay" provision, which guaranteed technicians 35 hours of pay each week even if they did not "book" that many hours. Each auto repair job completed by a technician is assigned a specific amount of time for completion. The assigned time is what the technician

[1] In the second consolidated complaint, the General Counsel also added Cases 13–CA–230375, 13–CA–235144, and 13–CA–235147, which involved charges filed by Teamsters Local 731, International Brotherhood of Teamsters, AFL–CIO against the Respondents. The trial included evidence presentation on those complaint allegations. On June 10, 2019 following the hearing, the General Counsel, Teamsters Local 731, and both Respondents reached an informal Board settlement resolving the allegations. On June 17, 2019, I approved the settlement agreement and severed those cases from this proceeding.

[2] In order to aid review, I have included citations to the record in my findings of fact. The citations are not necessarily exclusive or exhaustive. To ease the burden on the reader, I largely have placed the citations in footnotes at the end of each paragraph. In assessing witnesses' credibility, I have considered their demeanors, the context of the testimony, the quality of their recollections, testimonial consistency, the presence or absence of corroboration, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Where needed, I discuss specific credibility resolutions in my findings of fact.

[3] At the hearing, the Respondents stipulated to these factual findings and legal conclusions. Jt. Exh. 43, pars. 2(a) through 2(f).

[4] All dates hereinafter are in 2018, unless otherwise specified.

books for pay purposes, irrespective of how long it actually takes the technician to complete the job.[5]

The parties next met on April 4. Hendricks submitted a counterproposal to the Union, seeking the deletion of provisions on union security, dues checkoff, seniority and its application in layoffs and recalls, health insurance coverage and contributions through the union's welfare fund, and pensions through the union's pension fund. Hendricks told Lessman that Aaron Zeigler did not want to be in any trust fund and wanted to use the existing Zeigler Auto Group health insurance plan. Lessman asked for a copy of that plan and its premium costs to unit employees. Hendricks also told Lessman that Aaron Zeigler was not going to pay the base pay guarantee and wanted it eliminated from the contract. Beyond that, Zeigler Lincolnwood proposed no changes to the union's wage proposal. On April 13, Lessman requested from Hendricks a summary of benefits and coverage for every Zeigler health insurance plan. Lessman wanted the information so that the union's benefits administrator could compare the union's and Zeigler's plans. On April 16, Hendricks sent Lessman a summary plan description for Zeigler's plans, but did not provide the premium costs to employees. On May 7, Hendricks asked Lessman to provide dates for future negotiations. When Lessman responded that the union's health insurance comparison was not complete, Hendricks said he did not want the negotiations to drag on without meeting. The two agreed to continue bargaining on June 6.[6]

At some point in June, Lessman received a call from Ray McCarthy, the owner of McCarthy Ford in North Riverside. The Union also represented technicians there and the dealership was a signatory to the standard automotive agreement between the Union and the New Car Dealer Committee. McCarthy told Lessman he was selling the dealership to the Zeigler Auto Group. Lessman contacted Hendricks, who told him he would be representing Zeigler North Riverside as well.[7]

At the June 6 session, Lessman provided Hendricks with the union's health insurance benefit comparison. He pointed out the difference in family deductibles, $500 annually for the union's plan compared to either $8000 or $10,000 in the Zeigler plans. Hendricks responded that was what the company was offering. Hendricks again did not provide the Union with the employee premium costs. Lessman submitted a written information request for that information at this session. He also requested information regarding employee eligibility and participation in the Zeigler plans, as well as annual changes the past 3 years and proposed changes effective November 1. Lessman wrote the information was critical to the union's bargaining, because employees' health insurance was a significant issue.[8]

On June 8, Hendricks submitted a response to Lessman's information request. It included employee participation rates and total costs (employer and employee combined) for single, single plus one, and family coverage in each of the two Zeigler insurance plans. He also provided "benefits at a glance" pamphlets for the past 3 years. However, the response again did not include employee premium costs, nor did it include the specific benefit changes, if any, the prior 3 years. Lessman responded, noting that only benefit guides were provided, not modifications to the plans, and he would either have to figure out the changes on his own or send it out for comparison. When Hendricks complained about another delay in bargaining, Lessman responded that Zeigler Lincolnwood should have provided a summary of material modifications to the plans, instead of the summary plan descriptions. Lessman also stated for the first time: "Maybe Aaron needs to come to negotiations."[9]

From June 23 to 25, Hendricks and Lessman exchanged emails regarding the date of the next bargaining session. Lessman told Hendricks he was not available in June and he was still "deciphering" the information provided by Zeigler Lincolnwood on June 8. When Hendricks asked him what there was to decipher, Lessman responded that he needed to know whether coverage was getting better or worse for employees in order to intelligently bargain on the issue. Ultimately, the two agreed to meet again on July 3 at 4 p.m. at the Union's hall.[10]

On June 25, Zeigler Auto Group took over as owner of McCarthy Ford. Aaron Zeigler also became the president of Zeigler North Riverside. Brian Malpeli is the vice president/ general manager and Edgar Cortez is the service manager of the dealership. Immediately after taking over, Zeigler North Riverside changed employees' payroll period from weekly to biweekly, without discussing the change with the Union.[11] During the same timeframe at Zeigler Lincolnwood, technician Carlos Martinez spoke to Service Director Robbie Long about not getting vacation time he was seeking. Under the prior contract with Grossinger, technicians' vacation time was chosen by seniority. Martinez told Long he had more seniority over another employee to take the vacation. Long told him it was not a union shop anymore and she did not give a fuck about the 701 union.[12]

B. Zeigler Lincolnwood Implements Its Last, Best, and Final Offer

On July 3 at 1:19 p.m., Lessman emailed Hendricks and cancelled their bargaining session scheduled for 4 p.m. that day, saying the Union had called a special meeting at 3:30 p.m. Hendricks sent multiple responses to Lessman that same day, including one at 4 p.m. saying he was at the union hall waiting. On the morning of July 4, Lessman responded and again told Hendricks he was in a special meeting and had to change all of his plans.[13]

On July 6, Lessman emailed Hendricks an annotated contract with a proposed set of tentative agreements, comprised of the provisions from the union's initial March 29 contract proposal to which Zeigler Lincolnwood did not object in its April 4 counterproposal. Lessman also told Hendricks again that he needed the costs of health insurance for the prior 3 years. In the annotated contract, the Union agreed to a number of Zeigler Lincolnwood's

[5] Tr. 61–62, 95, 139–143; GC Exh. 6, pp. 18–19, 43; Jt. Exh. 3, pp. 18–19, 43.

[6] Tr. 144–154; Jt. Exhs. 4–7.

[7] Tr. 176–177. I correct the transcript at line 6 on page 177 to read "successorship," instead of "censorship."

[8] Jt. Exhs. 7, 8; Tr. 153–158.

[9] Jt. Exh. 9; Tr. 158–160.

[10] Jt. Exhs. 9, 10; Tr. 160–161.

[11] Tr. 96.

[12] Tr. 60–61; GC Exh. 6, p. 21. Martinez's testimony about what Long said is uncontroverted, as Long did not testify.

[13] Jt. Exh. 12; Tr. 161–162.

requested deletions. The first was the "customer pay menu" provision, under which the dealership's ability to offer discounts on repair jobs to customers was capped. The cap was desirable to unit employees, because any discount offered to the customer also reduced the amount of time the technician could book for the repair by the same percentage as the discount. By deleting the provision, the dealership could determine the discount rate on its own and offer any amount. The Union also agreed to delete the contract's requirement that the dealership's use of direct deposit to pay employees could only be implemented upon a majority vote of the bargaining unit. Furthermore, the Union conceded to deleting the provision under which employees earned vacation time for up to a year, while they were receiving worker's compensation due to a workplace injury. Finally, the Union agreed to delete the base pay guarantee.[14]

On July 10, Hendricks sent Lessman an email stating:

> Since Local 701 has done everything to delay negotiations including scheduling negotiations on July 3 at 4 pm at your hall, and then not showing up you have left me with no choice but to send you my clients last, best and final offer for the bargaining unit. Please note I have reduced it to one year and have increased the wage rates. If I do not receive a response, we intend to implement this offer on Monday, July 16.

Lessman responded the same day. He noted the lack of response from Hendricks to Lessman's July 6 email with the proposed tentative agreements and other union counterproposals. On July 11, Hendricks responded, accusing the Union of "contrived stories" and saying he "won't allow more games." Hendricks denied receiving any email from Lessman on July 6. He told Lessman to vote the last, best, and final offer. In his response sent the same day, Lessman offered to show the July 6 email to Hendricks. He also stated: "The three short bargaining sessions we had hardly touched the surface. I also have an information request that has not been complied with from my July 6th email." Lessman asked for more bargaining dates, telling Hendricks "we are still bargaining over the successor agreement." Lessman suggested Hendricks' law firm check its email server for issues. On July 12, Lessman sent Hendricks a screenshot of his July 6 email, which Hendricks again told Lessman he never received. On the same date, Lessman received an auto-reply email stating that his July 6 message to Hendricks was "undeliverable" due to "unknown address error" and "message size exceeds fixed maximum message size."[15]

Also, on July 12, Aaron Zeigler held a meeting with the Zeigler Lincolnwood technicians. Zeigler told the employees he was not going to negotiate any further with the Union and they were no longer going to be a union shop. He said he no longer would guarantee the technicians 35 hours of pay per week and they would get paid only for the jobs they booked. He said he was implementing a new pay plan the following Monday without the base pay guarantee, but with wage increases for technicians. He also told them he was not going to be involved in the union's underfunded pension plan and was not going to participate in the union's health insurance because he had his own insurance. He told the employees he would no longer deduct union dues from their paychecks. Zeigler added that the technicians could work there, work somewhere else, or they could go on strike but, if they did strike, he had replacements lined up and could replace them right then and there. Technician and union steward Galuski spoke up, telling Zeigler that they were still in negotiations and employees could not endure such life-altering decisions in just 2 days. Zeigler briefly left the meeting. When he returned, he told the group he called his attorney and the changes would not happen for a week.[16]

On July 13, Hendricks provided Lessman with the health insurance costs for the dealership and employees, based on the type of coverage and plan, from November 1, 2017 to October 31, 2018. In one plan, employees paid a premium of $347.23 per month for single medical coverage and $1,041.67 per month for family medical coverage. In the second plan, employees paid $278.66 per month for single medical coverage and $835.94 for family medical coverage. The employer paid 56 percent and the employee 44 percent of the total premium cost. Under the existing Grossinger contract, any technician employed when the agreement was ratified paid nothing per month towards the premium for the union's health insurance plan.[17]

During the week of July 23, Zeigler Lincolnwood implemented its last, best, and final offer, including the elimination of the base pay guarantee.[18] The dealership did not advise the Union that it had done so. Prior to the elimination, technician Martinez' biweekly gross pay was $2331, when he was paid the guarantee in both weeks. From July 23 to November 2 after the elimination, Martinez' biweekly gross pay ranged from $579.67 to $1927.66. In August, Martinez also lost his health insurance. He went to see his dentist and the receptionist asked him for his insurance card. When Martinez produced his union insurance card, the receptionist told him the insurance was terminated and he was responsible for his medical bills. Due to the elimination of the base pay guarantee and loss of the union's health insurance, Martinez resigned his employment from Zeigler Lincolnwood on November 2. Martinez no longer could make his mortgage payments or afford his and his family's medical expenses under the Zeigler plan. Prior to the elimination of the base pay guarantee, technician Galuski's biweekly gross pay was $2443, when he was paid the guarantee in both weeks. From July 23 to August 17 after the elimination, Galuski's biweekly earnings ranged from $516.96 to $2,225.46. Due to the decrease in his pay resulting from the elimination of the base pay guarantee,

[14] Tr. 163–171; Jt. Exh. 13, pp. 11–12, 16, 18, 21–22, 43.

[15] Jt. Exh. 14; Tr. 172–175.

[16] Tr. 58–60; 303–306. I credit Galuski's and technician Carlos Martinez' uncontroverted testimony concerning what Aaron Zeigler said in this meeting. I found both to be reliable witnesses and Aaron Zeigler did not testify.

[17] Jt. Exh. 15; GC Exh. 6, pp. 27–28; Tr. 180–184.

[18] I base the finding as to the timing of the implementation on Galuski's and Martinez' pay stubs, which show no guaranteed pay after the week of July 21. (GC Exhs. 3, 9.) That timing is consistent with Aaron Zeigler's statement at the July 12 meeting that he would wait a week (from the following Monday, July 16) to implement the announced changes. Finally, Zeigler Lincolnwood admits in its brief that it implemented its last, best, and final offer. (R. Brf., p. 4.)

Galuski resigned his employment with Zeigler Lincolnwood on August 17.[19]

C. Despite Zeigler Lincolnwood's Implementation of the Last, Best, and Final Offer, Bargaining Continues

Zeigler Lincolnwood and Machinists Local 701 next met for negotiations on August 6. On that date, the Union agreed to delete the contract's provision on dues checkoff, as well as the provision allowing 10 percent of employees to be off on any given day. Lessman also submitted a different information request to Hendricks. He sought all "side deals" between the dealership and technicians, as well as payroll records for the technicians since Zeigler took over as owner. Prior to making the request, unit employees informed Union Steward Galuski that Zeigler Lincolnwood was making side deals with individual employees. At the next meeting on August 15, Hendricks provided the Union with individual employment contracts the dealership made with four employees on July 20, 24, and 30. The agreements provided a variety of enhancements to terms and conditions of employment, including bonuses, insurance premium rebates, sick days, continuation of existing holiday schedules and training paths, and annual cost of living increases in pay. Hendricks told the union representatives he could not believe the dealership put the agreements in writing.[20]

Also, in early August, union representatives visited Zeigler Lincolnwood seeking to sign up new employees to join the Union. After the representatives left the dealership, Service Director Long approached Galuski and told him: "we're no longer a union shop and you need to get on board with that."[21]

On August 31, the Union provided Zeigler Lincolnwood with a variety of new counterproposals preceding their scheduled September bargaining dates. Among them was the offer to utilize the union's alternative "B" pension plan, which had a lower employer contribution rate than the existing pension plan and no withdrawal liability.[22]

D. Bargaining for an Initial Zeigler North Riverside Contract Begins

Meanwhile, at Zeigler North Riverside, Mark Grasseschi, the union's business representative, reached out via email to Aaron Zeigler regarding negotiations for an initial collective-bargaining agreement at that dealership. On August 21, Zeigler responded:

> There is no confusion on my part. Jim Hendricks has been in contact with Local 701 representatives including a face to face meeting last week where he once again requested to meet with 701 on [behalf] of the North Riverside location. Please direct all further communication to Jim Hendrick[s].[23]

On September 6, the Union and Zeigler North Riverside held their first bargaining session. The Union was represented by Lessman, Grasseschi, and Luis De Leon, a technician at Zeigler North Riverside. Just prior to the session, Grasseschi emailed Hendricks and Aaron Zeigler a copy of the collective-bargaining agreement between the Union and McCarthy Ford. Grasseschi stated the Union would pass this agreement as its initial proposal at bargaining that day. When the union representatives arrived for the session, Hendricks was on the phone with Aaron Zeigler. After the call ended, Hendricks told the representatives he was the dealership's attorney and not to bother Aaron Zeigler with communications.[24]

In the same timeframe as the initial bargaining session, Zeigler North Riverside began installing surveillance cameras throughout the property. Before then, the dealership had none. A camera was put into each of the technician's repair stalls. In addition, the dealership reduced the number of hours a technician was paid for a wheel alignment job from 1.7 hours to 1 hour. When technician Paul Gellert asked Service Manager Cortez why he was booked only 1 hour for a wheel alignment, Cortez responded "that's enough time." Finally, at McCarthy Ford, vacation time was determined by seniority. Around the same time that Zeigler took over, all previously scheduled vacation for employees was rescinded. Gellert already had scheduled time off during Christmas 2018. When he noticed another employee, not him, was now listed as being off at that time, Gellert asked Cortez about it. Cortez told him technician Chris Morris had the week off now and Gellert could not take it, because the dealership could not have two technicians off that week. Gellert had 29 years of seniority compared to Morris' 10 years. Also, in the fall of 2018 at Zeigler North Riverside, Gellert asked Cortez in a one-on-one conversation if Zeigler Lincolnwood still was union. Cortez responded no, that employees voted the Union out. At other times, Cortez and Bob Neil, another supervisor, told Gellert that both stores were no longer union.[25]

On September 18, Zeigler Lincolnwood held an open enrollment meeting to give employees the opportunity to join the company's health insurance plans. The announcement for the meeting informed employees that the open enrollment period was the one opportunity throughout the year to enroll in benefits and that all employees were required to attend the meeting. Technician Martinez saw the announcement, took a picture of it, and sent it to Albergo, the union's business representative. Martinez later attended one of the mandatory meetings that morning, along with other technicians and Albergo. Service Director Long and other supervisors also were present, along with an insurance representative who gave the presentation. The representative passed out an employee benefits enrollment guide to all the employees. He told the group that these were the benefits which Zeigler

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[19] GC Exh. 3; Tr. 64–65, 67, 71–72, 307, 311–313. Martinez' testimony about his pay rates before and after the base pay guarantee lacked clarity (Tr. 64–66). Thus, I rely upon the pay stubs of Martinez and Galuski in reaching the findings of fact concerning the reduction in their earnings.

[20] Tr. 185–191, 244–246; Jt. Exhs. 17, 18. At the hearing, the Respondent stipulated to the following with respect to these side deals: "About July 20, 2018, July 24, 2018, and July 30, 2018, Respondent Lincolnwood by Robbie Long, at Respondent Lincolnwood's facility, bypassed Charging Party Local 701 and dealt directly with its employees in the Lincolnwood 701 Unit by entering into individual employment contracts with Lincolnwood 701 Unit employees." (Jt. Exh. 43, par. 2(g).)

[21] Tr. 307–308.

[22] Jt. Exh. 19; Tr. 148–149.

[23] Jt. Exh. 38.

[24] Jt. Exhs. 20, 21; Tr. 193–195.

[25] Tr. 96–104, 113–115, 288–289.

offered and recommended. Albergo stood up and told the technicians he did not recommend they elect the Zeigler insurance, because they had insurance through the Union and it was a better, free plan. Long told Albergo the dealership was not a union shop anymore, the meeting had nothing to do with him, he was scaring the employees by being there, and he had to leave.[26]

After the bargaining session on September 19, the Union submitted an information request for payroll records of all Zeigler Lincolnwood bargaining unit employees. The request sought hours worked, hours booked, hours of base pay guarantee paid (if applicable), and overtime paid, all by pay period. Lessman submitted the request after the Union heard from some unit employees that they no longer were getting the 35 hours of minimum pay. Lessman also asked that Aaron Zeigler check his availability to meet with the Union and discuss open issues on both contracts being negotiated. On September 21, Hendricks responded:

> Aaron Zeigler will not be meeting with you, as I represent the dealerships. As I noted in July, we are at impasse and have implemented our last, best and final offer.

This was the first time Hendricks mentioned the last, best, and final offer to the Union since he submitted it to them on July 10. Lessman responded the same day, telling Hendricks the parties were not at impasse and asking for bargaining dates. The two exchanged additional messages arguing about whether they were at impasse and why the Union was not available for negotiations for another 6 weeks.[27]

The parties' next negotiation session was scheduled for October 25. Six days prior to then, Grasseschi submitted an information request to Hendricks seeking all side deals between Zeigler North Riverside and individual employees. He also requested payroll records from the June 25 date Zeigler took over through October 19. The Union had heard from unit employees at North Riverside that the dealership was entering into employment contracts with individual employees, as had occurred at Zeigler Lincolnwood. On October 21, Hendricks responded with the payroll information. He also told Grasseschi "[t]here are no 'side deals.'" However, when Grasseschi reviewed the payroll information, he noticed several employees earning an hourly rate in excess of the maximum one provided in the existing collective-bargaining agreement. At some point in the same timeframe, Grasseschi visited Zeigler North Riverside and observed camera cable hanging out of the ceiling all over the dealership. An employee told Grasseschi about the surveillance cameras the dealership was installing. Grasseschi then submitted an information request to Hendricks concerning the cameras.[28]

E. Negotiations for the Two Dealerships Are Merged and Side Deals Reemerge

At the meeting on October 25, the parties agreed to merge the negotiations for Zeigler Lincolnwood and North Riverside because the same collective-bargaining agreement would apply at both dealerships. Hendricks also tentatively agreed to the Union's wage proposal, which was the same one the Union had made in its initial contract proposal for Zeigler Lincolnwood. Thus, Hendricks signed off on a different wage scale than the one contained in Zeigler Lincolnwood's last, best, and final offer.[29]

On October 31, Hendricks emailed Lessman and asked when Lessman would be "voting." Lessman responded that he could not do so until Hendricks provided him with what the health insurance costs and coverages would be for the upcoming plan year from November 1, 2018, to October 31, 2019. Neither individual identified exactly what unit employees would vote. On November 8, Hendricks provided the information to Lessman, which showed an increase to employee costs.[30]

On November 8, Zeigler North Riverside technician Phil Haberland gave Cortez a 2-week notice of his intent to resign. Later the same day, Cortez told Haberland he spoke to Malpeli, who wanted to know if Haberland would think about an offer. Haberland told Cortez he would. A week later, Malpeli contacted Haberland directly and asked him for a dollar amount. Haberland told Malpeli he wanted $44.30 per hour. On December 1, Cortez presented a proposed agreement to Haberland, who signed it that day. The dealership raised Haberland's pay to $45.30 per hour, a dollar-per-hour more than he requested. The dealership also gave him a monthly loyalty bonus of $1,180. Similarly, during the week of November 22, Malpeli and Cortez met with De Leon. Malpeli said, moving forward, the dealership was going to be a nonunion shop. He told De Leon he did good work and they wanted him to stay, so he was offering to cover his insurance premiums for the month as a loyalty bonus. This was the first time De Leon received such a bonus. During this same timeframe, Cortez gave De Leon a sheet of paper outlining a new pay plan for him. The plan called for De Leon to receive a $4-per-hour wage increase and the previously-discussed monthly loyalty bonus of $1180. Cortez also gave De Leon a draft of a letter from De Leon to the Union, in which De Leon would request his resignation from the Union. De Leon never previously told Cortez he wished to resign from the Union and refused to sign the letter draft. Nonetheless, shortly thereafter, De Leon received both the wage increase and the monthly loyalty bonus. On December 3 and 10, Zeigler North Riverside entered into additional individual employment contracts with three more bargaining unit employees. These agreements likewise increased the employees' wages and/or granted them loyalty bonuses.[31]

On November 20, Hendricks sent the following reply[32] to

[26] Tr. 67–72, 90–92, 246–252; Jt. Exhs. 41, 43 (par. 2(i)); GC Exh. 7.
[27] Jt. Exh. 22; Tr. 195–197.
[28] Jt. Exhs. 23, 24; Tr. 198–199, 267–270, 279–281.
[29] Jt. Exh. 25; Tr. 199–206.
[30] Jt. Exhs. 26, 27; Tr. 208–211.
[31] Tr. 116–122, 290–291, 295–298, 300–301; GC Exhs. 4, 8; Jt. Exhs. 39, 43 (par. 2(h)). Zeigler North Riverside stipulated to the following at the hearing: "Beginning November 8, 2018, Respondent Zeigler North Riverside dealt directly with its employees in the Riverside 701 Unit by entering into individual employment contracts with Riverside 701 Unit employees."
[32] Jt. Exh. 40.

Grasseschi's information request regarding the surveillance cameras at Zeigler North Riverside:

> I apologize for not getting back to you sooner on the installation of security cameras at the above facility. After the Zeigler purchase a vehicle was stolen. All Zeigler dealerships have cameras. The purpose of the cameras is to deter theft, record incidents when they occur including break-ins, theft, employee, customer and public injuries and any other incidents which would provide the company security with a taped recording. The recordings are normally kept for 30 days, unless it is determined there was an incident, in which case it is held until such incident is resolved. Location of cameras and camera angles are a matter of privacy and security. All areas of the property are the focus of the cameras, except for areas of privacy, such as washrooms, etc.
>
> The cameras could be used for discipline, if such is necessary. Any such discipline would be subject to the grievance procedure. Should you care to negotiate on this, please let me know.

F. Hendricks and Lessman Reach a Tentative Agreement on a Complete Contract

On an unspecified date at the end of November at Zeigler North Riverside, Aaron Zeigler held a meeting with all unit employees. Utilizing a PowerPoint slide show, Zeigler told them about his "proposal," saying they were going to get a $3-per-hour wage increase over the current contract rate. He also said they would get his insurance, rather than the union's insurance, but his was just as good and cost $151 per paycheck. Zeigler told them he was not going to pay into the union pension plan, but would offer the employees his 401(k). Zeigler said, if the employees did not vote for his proposal, he would implement it, because bargaining was taking too long and he was done with it. He added, if they went on strike, he would no longer talk to the Union and would replace the technicians.[33]

On November 27, Hendricks emailed Lessman a new, proposed wage scale for Zeigler North Riverside, which differed from the one the two had tentatively agreed to on October 25. The proposed wage rates were higher than those in either the October 25 tentative agreement or Zeigler Lincolnwood's July 10 last, best, and final offer. Hendricks also advised Lessman for the first time that the employer's 401(k) contribution match would be discretionary.[34]

The parties' next bargaining session occurred on November 29. On that date, Lessman provided Hendricks with revised proposals for both dealerships on wages, health insurance, and 401(k). On wages, the Union updated the hourly wage rates to conform with the proposal Hendricks sent on November 27. For health insurance, the Union agreed that employees would get their medical care through the Zeigler plans. The proposal also included the premium costs for the employer and employees for the current plan year, which Hendricks provided on November 8. On retirement, the Union agreed that, going forward, employees would be covered by Zeigler's 401(k) plan instead of the union's pension plan. These were the last outstanding issues to reaching a complete agreement. Hendricks told Lessman he would have to get Aaron Zeigler's approval before the Union could vote the contract. In addition, the two sides discussed the surveillance cameras at Zeigler North Riverside. Hendricks said the dealership put in the cameras after a car was stolen. Grasseschi asked him what the reason was for putting a camera in every technicians' stall then. Hendricks responded that, if something came up, the Union could just grieve it.[35]

On December 3, Lessman emailed Hendricks, told him the Union wanted to vote the contracts that week, and asked when he would have the dealerships' response to the Union's proposals on the remaining outstanding issues. He said the Union needed tentative agreements on its proposals so it could vote a complete agreement. On December 5, Lessman and Hendricks talked briefly about the Zeigler negotiations while meeting on a different matter. Lessman again asked about the Union's proposals and Hendricks responded he would have to get back to him and let him know. Lessman sent Hendricks an email that same day after the discussion, again asking for a TA on the proposals so the Union could vote the contracts. On December 6, Hendricks emailed Lessman and stated, "TA on both."[36]

G. The Union's Ratification Votes and Their Aftermath

On December 7, employees ratified the proposed contracts at both dealerships. Following the vote at Zeigler North Riverside, Malpeli met with the technicians. He told them he did not know what they voted on, but it was a false contract, because Aaron Zeigler had not approved it. He said Zeigler would be visiting the dealership to clear everything up. When Zeigler later met with the technicians, he told them he never saw or read the contract, the Union was lying to them, and he did not know why the Union would do that. Zeigler said he planned on suing the Union for false contracts. De Leon called Grasseschi and told him what occurred.[37]

Thereafter, Lessman, Grasseschi, and Albergo went to Zeigler North Riverside. Several employees relayed to them that Aaron Zeigler said the contracts were no good, he did not agree to them,

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[33] Tr. 104–106, 291–292. In reaching the findings of facts in this paragraph, I credit Gellert's and De Leon's testimony about what Zeigler said in this meeting. The testimony is uncontroverted and both witnesses testified with trustworthiness and conviction on this subject. However, contrary to the General Counsel's contention, I conclude Aaron Zeigler only held one meeting that month with technicians and that it occurred at the end of November. In response to leading questions, Gellert testified that Aaron Zeigler held a meeting on November 9 and De Leon testified Zeigler held a meeting at the end of November/beginning of December. As will be discussed, Hendricks submitted a new wage proposal to the Union on November 27. (Jt. Exh. 28, pp. 1–2.) The proposal itself appears to be a page from a PowerPoint presentation, consistent with what Zeigler used when describing the Respondent's contract proposal to the technicians. I find it logical that Zeigler would hold the meeting with technicians close in time to when the proposal was made. I also find it unlikely that Zeigler would hold two meetings with the same employees and review the same proposal.

[34] Jt. Exh. 14 (p. 41), 25(a) (p. 43), 25(b) (p. 43), 28 (p. 2); Tr. 211–213.

[35] Jt. Exh. 29; Tr. 214–219; 282–285.

[36] Jt. Exhs. 30, 31; Tr. 219–223, 270–271. Overall, the parties met on 12 dates from March through December. The meetings occurred on March 29, April 4, June 6, August 6 and 15, September 4, 6, 12, and 19, October 25, November 29, and December 5. Most of the sessions lasted approximately half an hour. (Jt. Exh. 43, par. 1; Tr. 138.)

[37] Tr. 293–295.

and he was not going to sign them. The union representatives then met with Aaron Zeigler. Lessman introduced himself to Zeigler, who told Lessman he did not authorize the contracts. Lessman disagreed with Zeigler that the contracts were not valid, telling him they had been negotiated, tentatively agreed to, and ratified by employees. As Lessman was speaking, Albergo noticed that Zeigler had his cell phone in his hand. Albergo asked Zeigler if he was recording the meeting and told him Illinois was a two-party consent state. Zeigler said he was, to which Albergo responded he did not consent to being recorded. Lessman asked Zeigler to turn the recording off. Zeigler said why and asked if Lessman was afraid he was going to lie. Lessman responded that he had no problem with being recorded, but Albergo had asked him to turn it off and he needed to do so. Grasseschi then accused Zeigler of lying to the technicians when he told them the Union was stalling on getting a contract done. At that point, Zeigler told the union representatives to leave the dealership. Zeigler directed them out the front door and stood outside until they left. He told them they were not to step on the property of either dealership ever again and were not allowed at any of his other dealerships.[38]

Prior to the December 7 meeting, union representatives had unlimited access to employees in the common areas at both dealerships, including after Zeigler took over. The prior contracts at Grossinger Lincolnwood and McCarthy Ford contained the following provision: "Union Access to Facility. A Union representative shall be permitted access to the Employer's premises for the purpose of adjusting complaints individually or collectively."[39]

On December 8, Lessman emailed Hendricks, noted the contracts had been ratified, and said he would contact the union's funds to advise them employees would be moved to Zeigler's health insurance and 401(k) plans. Lessman also told Hendricks he would forward the ratified contracts to him the following week for execution. On December 10, Lessman did so. Hendricks responded the same day, forwarding an email from Zeigler to Hendricks in which Zeigler stated: "Obviously this is a problem and we will not sign the agreement. Let them know immediately." Neither Zeigler nor Hendricks elaborated further as to what the problem was or otherwise why Zeigler refused to sign the agreements.[40]

On April 9, 2019, Aaron Zeigler reversed course, signing the contracts for Zeigler Lincolnwood and Zeigler North Riverside which the Union had sent to Hendricks on December 10. He did so two weeks prior to the scheduled hearing in this case.[41]

ANALYSIS

I. DID THE RESPONDENTS THREATEN EMPLOYEES IN VIOLATION OF SECTION 8(A)(1)?

The General Counsel's complaint alleges four independent violations of Section 8(a)(1) for unlawful threats to employees, three of which involve Zeigler North Riverside.

First, the complaint alleges that Aaron Zeigler threatened employees during the November 2018 meeting at Zeigler North Riverside in which he described the dealership's latest contract proposal. The credited testimony establishes that Zeigler told employees they would get a $3-per-hour wage increase. He also said they no longer would have union health insurance, but would be covered by his insurance which was just as good. He explained he was no longer going to pay into their pensions, but would offer them a 401(k) plan. After detailing these changes, Zeigler told employees, if they did not vote for the proposal, he would implement it. He also said, if they went on strike, he would no longer talk to the Union and would replace the technicians.

Under Section 8(c) of the Act, an employer is free to inform employees about proposals it previously made to a union during negotiations. *United Technologies Corp.*, 274 NLRB 609, 610 (1985) (citing *Procter & Gamble Mfg. Co.*, 160 NLRB 334, 340 (1966)). However, statements which do not accurately reflect the obligations and possibilities of the bargaining process violate Section 8(a)(1). *Federated Logistics & Operations*, 340 NLRB 255, 255–256 (2003), review denied 400 F.3d 920 (D.C. Cir. 2005). Here, Zeigler did not accurately describe the employer's bargaining obligations when he told employees he would unilaterally implement the proposal if they did not ratify it. The dealership could implement its last, best, and final offer only after reaching an overall impasse in bargaining with the Union. Zeigler did not mention impasse, instead saying the Union was taking too long. Even if the claim was true, it is not a basis for unilaterally implementing a final offer. Thus, Zeigler's statement in that regard is unlawful. *Ryder Student Transportation Services, Inc.*, 333 NLRB 9, 12–13 (2001) (employer's description of bargaining process as involving union demands, employer demands, a counteroffer from the union to the employer's demands, and then a "unilaterally binding contract and that will be the end of it" violated Section 8(a)(1)). Zeigler also inaccurately stated he no longer had to talk to the Union if employees went on strike. A strike by employees has no effect on the status of the Union as the employees' collective-bargaining representative, nor would it free the dealership of its continuing bargaining obligation with the Union. *Noel Foods*, 315 NLRB 905, 909 (1994) (employer cannot lawfully inform employees that it will no longer recognize a union, unless the union has lost the support of a majority of employees or the employer has a good-faith doubt, based on objective evidence, that the union has lost its majority status). Finally, Zeigler's comment that he would replace the technicians if they went on strike likewise is unlawful. Although an employer is free to truthfully inform employees they are subject to permanent replacement in the event of an economic strike, such statements are unlawful when accompanied by threats that employees will be deprived of their rights as a result of a strike. *Unifirst Corp.*, 335 NLRB 706, 706–707 (2001); *Eagle Comtronics, Inc.*, 263 NLRB 515, 516 (1982). Zeigler's statement misstates the law, because he could not replace employees engaged in an unfair-labor-practice strike. Moreover, he made the statement in the context of other unlawful threats in the same meeting. Accordingly, I conclude Zeigler

[38] Tr. 223–228; 253–256; 272–278. The testimony of Lessman, Albergo, and Grasseschi about this meeting was uncontroverted and consistent.

[39] Tr. 228, 256, 277–278; GC Exhs. 5 (p. 24), 6 (p. 25).

[40] Jt. Exhs. 31, 42; Tr. 230.

[41] Jt. Exhs. 44(a) and 44(b); Tr. 241–242.

violated Section 8(a)(1) multiple times in this November 2018 meeting.[42]

Second, the General Counsel alleges that Edgar Cortez, Zeigler North Riverside's service manager, unlawfully threatened technician Paul Gellert in the fall of 2018.[43] In a one-on-one conversation, Gellert asked Cortez if the Zeigler Lincolnwood dealership still was union. Cortez responded no and that the technicians there voted the Union out. Cortez' statement was false. It also undermined the Union's standing by suggesting the Zeigler Lincolnwood technicians no longer supported the Union. Accordingly, Cortez' statement violates Section 8(a)(1). *Industrial Hard Chrome, Ltd.*, 352 NLRB 298, 311–312 (2008) (supervisor's false statement to unit employee that he had no union representative violated Section 8(a)(1)); *Berbiglia, Inc.*, 233 NLRB 1476, 1491 (1977) (employer's false statement in letter to employees that the union did not want to continue representing them violated Section 8(a)(1)).

Third, the General Counsel alleges that Brian Malpeli, Zeigler North Riverside's vice president, unlawfully threatened technician Luis De Leon during a meeting the week of November 22, 2018. Malpeli told De Leon the dealership was going to be a nonunion shop moving forward and they wanted De Leon to stay. He then offered to cover De Leon's insurance premiums for the month as a loyalty bonus. A reasonable employee objectively would interpret Malpeli's "nonunion shop" comment to mean that North Riverside technicians would no longer be represented by the Union. *Venture Industries, Inc.*, 330 NLRB 1133, 1133 (2000) (reasonable interpretation of comment that the employer's facility "would never be a union shop" was that employer would not recognize or bargain with a union); *Noel Foods*, supra (reasonable interpretation of statement to employees that employer was about to start operating "nonunion" after contract expired was that employees would no longer be represented by the union). Zeigler North Riverside argues that Malpeli merely was referring to the dealership's proposed deletion of the union-security clause from the existing collective-bargaining agreement. I do not agree. When making the nonunion shop comment, Malpeli said nothing about contract negotiations or the deletion of the union-security clause to provide context to his comment. Instead, he made a bonus offer to De Leon to the exclusion of the Union, which would be lawful only if the Union no longer represented the technicians. Beyond that, the term "union shop" has a specific, technical meaning in labor law, one that even practitioners in the field sometimes have difficulty explaining. A reasonable employee hearing the "nonunion shop" comment would not conclude Malpeli was saying employees would no longer be required, as a condition of employment, to become or remain members of the Union (or opt out and pay nonmember fees). Thus, Malpeli's statements to De Leon violate Section 8(a)(1). *Sunol Valley Golf Club*, 310 NLRB 357, 376 (1993) (employer violated Section 8(a)(1) by telling employee during ongoing strike that it no longer was a "union shop," could hire anyone it wanted, and picketers would probably not be back to work at the company).

Finally, the General Counsel alleges that Respondent Zeigler Lincolnwood violated Section 8(a)(1) during Service Director Robbie Long's conversation with Mark Galuski, a technician and union steward, in August 2018. Following a visit from union representatives to sign up new employees as members, Long told Galuski "we're no longer a union shop and you need to get on board with that." At the time Long made the comment, Zeigler Lincolnwood had implemented its last, best, and final offer, which deleted the union security clause from the contract. If the reasonable interpretation of "union shop" in this context was that the technicians no longer were represented by the Union, then Long's statement violates Section 8(a)(1) for the same reasons articulated in the preceding paragraph. If the reasonable interpretation was the labor law meaning, the statement remains unlawful because of Long's subsequent direction to Galuski that he "needed to get on board with that." Even if new employees were not required to become union members as a condition of employment, union representatives still could attempt to get employees to voluntarily become members. Long's directive suggested the union representatives, including Galuski, should stop doing so or would face consequences. Thus, I find Long's statement to be unlawfully coercive.

II. DID RESPONDENT ZEIGLER LINCOLNWOOD IMPLEMENT ITS LAST, BEST, AND FINAL OFFER PRIOR TO REACHING AN OVERALL GOOD-FAITH IMPASSE?

The General Counsel's complaint further alleges that Zeigler Lincolnwood implemented the terms of its last, best, and final offer on July 23, 2018, without first bargaining with Machinists Local 701 to an overall good-faith impasse for a collective-bargaining agreement.

A bargaining impasse occurs when good-faith negotiations have exhausted the prospects of reaching an agreement. *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), review denied sub. nom. *Television Artists AFTRA v. NLRB*, 392 F.2d 622 (D.C. Cir. 1968). To determine whether impasse has been reached, the Board considers the totality of the circumstances, including "[t]he bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, [and] the contemporaneous understanding of the parties as to the state of negotiations." *Stein Industries, Inc.*, 365 NLRB No. 31, slip op. at 3 (2017) (quoting *Taft Broadcasting Co.*, supra); *Centinela Hospital Medical Center*, 363 NLRB 411, 413 (2015). Impasse is defined as the point in time in negotiations when the parties are warranted in assuming that further bargaining would be futile. *PRC Recording Co.*, 280 NLRB 615, 635 (1986) (citations omitted). "Both parties must believe they are at the end of their rope." *Nexeo Solutions, LLC*, 364 NLRB No. 44, slip op. at 12 (2016) (quoting *Larsdale, Inc.*, 310 NLRB 1317, 1318 (1993)). The party claiming impasse, here Respondent Zeigler Lincolnwood, bears the burden of demonstrating its existence. *Dish Network Corp.*, 366 NLRB No. 119, slip op. at 2 (2018).

[42] In reaching this conclusion, I further note the record evidence does not establish whether Zeigler held the meeting with employees at which he discussed the dealership's proposal before or after Hendricks submitted the proposal to the Union. Thus, the evidence is insufficient to demonstrate that Zeigler was lawfully discussing a proposal already made to the Union.

[43] The complaint alleges the conversation occurred "about November 2018," but Gellert testified he thought it was in September 2018.

Applying the *Taft Broadcasting* factors here, I conclude the parties did not reach a bargaining impasse. First, Zeigler Lincolnwood and Machinists Local 701 had no bargaining history. The Union's bargaining history was with the New Car Dealer Committee and Grossinger. Having just bought the business, Zeigler Lincolnwood was, for all practical purposes, negotiating its initial collective-bargaining agreement with the Union. Moreover, even though Hendricks and Lessman were working off the existing Grossinger contract, Zeigler Lincolnwood sought drastic changes to that agreement. They included the elimination of health insurance and pensions from the Union's plans, as well as the base pay guarantee. In these circumstances, parties must be afforded the fullest opportunity to reach agreement. *Stein Industries, Inc.*, supra, slip op. at 4, fn. 9. Bargaining history does not favor a finding of impasse.

Second, the parties only had three, short bargaining sessions prior to Zeigler Lincolnwood declaring impasse. On March 29, the Union simply passed the existing Grossinger contract as its initial proposal. On April 4, Zeigler Lincolnwood provided a comprehensive counterproposal, where it sought the changes to many critical, existing employee benefits described above. The dealership also proposed eliminating provisions on union security, dues checkoff, and seniority. In response to the proposed change in health insurance, Lessman immediately asked for information about the Zeigler plans, including the premium costs to employees. At the June 6 session, Lessman provided Hendricks with the Union's health insurance plan comparison, showing an exceedingly large difference in employees' annual deductibles. This evidence establishes that, at the point where Hendricks declared impasse on July 10, the parties had barely discussed the dealership's proposed contract changes. Negotiations of such a short duration and involving such limited discussion of the most important bargaining subjects weigh against a finding that the parties were at impasse. *Ead Motors Eastern Air Devices, Inc.*, 346 NLRB 1060, 1064 (2006).

Third, prior to Hendricks declaring impasse, the two sides were negotiating in good faith. To begin, when Hendricks explained the dealership's proposals to eliminate the existing health, pension, and minimum pay guarantee benefits, he framed them as "wants," not positions etched in stone. On April 4, he said Aaron Zeigler did not want to be in any trust fund and wanted to use his own health insurance and retirement plans. He also told Lessman that Aaron Zeigler wanted the base rate guarantee eliminated from the contract. On June 6, after Lessman gave him the deductible comparison, Hendricks responded the Zeigler plans were what the company was offering. Moreover, at no point did Lessman respond that the Union would not agree to any of the proposed changes. Neither negotiator made any statements reflecting the belief that they had exhausted the prospects of reaching agreement.

Moreover, on July 6, prior to the claimed impasse, the Union submitted counterproposals with meaningful concessions to Hendricks. As bargaining chips went, the most significant concession was the Union's agreement to eliminate the base pay guarantee. In addition, the Union agreed to cut the contract's restrictions on the dealership's ability to offer discounts to customers and to utilize direct deposit for employees' pay. The Union also agreed to cut vacation time credit employees earned while on workman's compensation. The dealership had requested all of these concessions in its April 4 counterproposal. Even though Hendricks did not get Lessman's email with the proposals until after he declared impasse, he did not rescind his declaration after receiving them. Thereafter, Hendricks and Lessman continued bargaining for nine additional sessions and ultimately reached a tentative agreement on a complete contract.

What is readily apparent for the sequence of events is that Hendricks' submission of the last, best, and final offer was prompted by annoyance at the Union's failure to show for the scheduled 4 p.m. bargaining session on July 3. But its cancellation of that meeting has no bearing on whether the parties reached a bargaining impasse, because the record evidence does not establish the Union's action was done in bad faith. Lessman had to cancel the session due to a surprise meeting called by his union leadership the same day. Prior to this, Hendricks repeatedly expressed exasperation with the slow pace of negotiations and the delays between bargaining sessions. The source of the exasperation was Zeigler Lincolnwood's continued exposure to the costs involved in making its required contributions to the Union's welfare and pension funds.[44] Lessman's cancellation of the July 3 session was the proverbial straw which broke the camel's back, but had nothing to do with the Union's good faith in negotiations, the parties' bargaining positions, or whether future sessions would be futile.

Finally, at the time Hendricks submitted the final offer and declared impasse, the dealership had not responded to the Union's information request for employee insurance premium costs for the Zeigler plans. Hendricks did not end up providing the information until July 13, three days after sending the last, best, and final offer. That Zeigler Lincolnwood had easy access to the premium costs it and its employees paid under the Zeigler Auto Group plans is self-evident. One email from Hendricks to the dealership's human resources department would have sufficed to expediently obtain the information—as it ultimately did.[45] The delay in providing this information for more than three months is inexplicable. The Union could not properly evaluate the proposal to adopt Zeigler's health insurance plans without knowing what the plans' premium costs were to employees, compared to the zero cost to them for the Union's plan. The information was necessary for the Union to engage in meaningful bargaining. With that request outstanding, the parties could not have reached impasse on July 10. *E. I. du Pont & Co.*, 346 NLRB 553, 557–558 (2006); *Decker Coal Co.*, 301 NLRB 729, 740 (1991).

For all these reasons, I find the parties' good faith in negotiations likewise supports a finding that the parties had not reached impasse in bargaining. *Newcor Bay City Division of Newcor*, 345 NLRB 1229, 1238–1239 (2005).

Fourth, regarding the contemporaneous understanding of the parties as to the state of negotiations, the Union did not believe the parties were at impasse. Lessman immediately responded to Hendricks' July 10 impasse assertion by telling him they had hardly touched the surface in the 3 bargaining sessions, he had an outstanding information request, and he wanted more dates

[44] R. Brf., p. 5.

[45] Jt. Exh. 15, pp. 1–2.

from Hendricks to bargain over the agreement. This factor also weighs in favor of finding no impasse had been reached. *Ead Motors*, supra at 1064.

Fifth, the importance of the issues as to which there was disagreement is the only one which might weigh in favor of finding impasse. Admittedly, health insurance, retirement benefits, and the minimum pay guarantee were very important to both sides. However, at the time of the impasse declaration, the Union had not said it would never agree to Zeigler Lincolnwood's proposal to move employees out of the Union's plans. It also had no opportunity to formulate a position on health insurance, having not received relevant information it had requested from the dealership. Furthermore, even before the impasse declaration by the dealership, the Union agreed to eliminate the base pay guarantee. Thus, despite the importance of the issues in dispute, the parties were not at the end of their respective ropes on them when Hendricks declared impasse. Overall, this factor also indicates the parties were not at impasse. *Stein Industries*, supra, slip op. at 4–5.

Given the *Taft* factors and under the totality of the circumstances, I conclude Respondent Zeigler Lincolnwood violated Section 8(a)(5) by implementing the terms of its last, best, and final offer without having reached a bargaining impasse in negotiations with Machinists Local 701 for an initial collective-bargaining agreement.[46] *Penford Products Co.*, 366 NLRB No. 74 (2018); *Centinela Hospital Medical Center*, 363 NLRB 411 (2015). Any unilateral changes to employees' terms and conditions of employment resulting from the implementation of the last, best, and final offer likewise violated Section 8(a)(5). *NLRB v. Katz*, 369 U.S. 736 (1962).

III. DID RESPONDENT ZEIGLER LINCOLNWOOD CONSTRUCTIVELY DISCHARGE TECHNICIANS MARK GALUSKI AND CARLOS MARTINEZ?

The General Counsel's complaint also alleges Respondent Zeigler Lincolnwood violated Section 8(a)(3) by constructively discharging Galuski and Martinez when it unlawfully eliminated the base pay guarantee and the health insurance provided through the Union's welfare plan.

"A constructive discharge is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surround it. Such situations may arise when an employer confronts an employee with the Hobson's Choice of either continuing to work or foregoing rights protected by the Act." *Intercon I (Zercom),* 333 NLRB 223, 223 (2001) (quoting *Multimatic Products*, 288 NLRB 1279, 1348 (1988)). Under the Hobson's Choice line of cases, an employee's voluntary resignation will be considered a constructive discharge when an employer conditions the employee's continued employment on the employee's abandonment of his or her Section 7 rights and the employee quits rather than comply with the condition. Ibid. (citing *Hoerner Waldorf Corp.*, 227 NLRB 612 (1976)).

After Zeigler Lincolnwood implemented its last, best, and final offer, the technicians' 35-hour base pay guarantee was eliminated on July 23 and employees' health insurance subsequently was changed to the Zeigler plans. Thereafter, the weekly earnings of both Martinez and Galuski were less than the guarantee, sometimes substantially less. Galuski resigned on August 17, due to the reduction in pay. Martinez resigned on November 2, due to the reduction in pay and the increased out-of-pocket medical expenses resulting from the Zeigler health insurance. Thus, their resignations were caused by the unlawful unilateral changes made by the dealership. Galuski and Martinez were presented with the Hobson's Choice of continuing to work with a reduction in pay and increased health costs from the violation of their Section 7 rights or to resign their employment.[47]

Respondent Zeigler Lincolnwood argues the two technicians were not constructively discharged, because the working condition changes were not imposed on them due to their union activities. This argument misses the mark, because the General Counsel proceeded on a Hobson's Choice theory to demonstrate the violation, not a traditional constructive discharge theory. Under the latter theory, a violation is shown where an employer, with knowledge of an employee's participation in union activity, harasses the individual to a point that job conditions become intolerable and force the employee to resign. *Naperville Jeep/Dodge*, 357 NLRB 2252, 2274 (2012). Whether the employees engaged in union activity is only relevant under that theory.

Accordingly, Respondent Zeigler Lincolnwood violated Section 8(a)(3) by constructively discharging both employees. *Dish Network Corp.*, 366 NLRB No. 119, slip op. at 11 (2018) (employees who resigned after employer's unlawful implementation of its final offer cut their pay by 30 percent and greatly increased their health insurance costs were constructively discharged); *Electric Machinery Co.*, 243 NLRB 239, 239–240 (1979) (after employer unilaterally changed working conditions before impasse was reached, employees who resigned rather than endure, among other changes, reduced wages and elimination of their union-provided health insurance were constructively discharged).

IV. DID RESPONDENT ZEIGLER NORTH RIVERSIDE UNILATERALLY CHANGE EMPLOYEES' WORKING CONDITIONS?

The General Counsel's complaint alleges Respondent Zeigler North Riverside made numerous unilateral changes to technicians' working conditions after taking over the dealership on June 25, without notifying or bargaining with the Union.

The law is well settled that an employer violates Section 8(a)(5) when it unilaterally changes represented employees' wages, hours, and other terms and conditions of employment without providing their bargaining representative with prior notice and a meaningful opportunity to bargain over the changes. *Lincoln Lutheran of Racine*, 362 NLRB 1655, 1656 (2015) (citing *NLRB v. Katz*, 369 U.S. 736, 742–743 (1962)). Where, as here, parties are engaged in contract negotiations, an employer's obligation to refrain from unilateral changes extends beyond the

[46] As previously noted, Zeigler Lincolnwood also stipulated to the finding that it bypassed the Union and engaged in direct dealing with unit employees in July 2018, by entering into individual employment contracts with them. This conduct also violated Sec. 8(a)(5).

[47] Although neither employee immediately resigned upon the implementation of the last, best, and final offer, that fact does not alter the outcome. Galuski and Martinez could not ascertain the exact financial impact of the elimination of the base pay guarantee and the change to Zeigler health insurance without some passage of time.

mere duty to provide notice and an opportunity to bargain about a particular subject matter. It encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole. *RBE Electronics of S.D., Inc.*, 320 NLRB 80, 81 (1995); *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991). Furthermore, a perfectly-clear successor is obligated to bargain with a union prior to setting initial terms and conditions of employment that differ from those under the predecessor. *NLRB v. Burns Security Services, Inc.*, 406 U.S. 272, 294–295 (1972); *Spruce Up Corp.*, 209 NLRB 194, 195 (1974). The failure to do so violates Section 8(a)(5). *Nexeo Solutions, LLC*, 364 NLRB No. 44, slip op. at 5–6 (2016).

After Zeigler Auto Group took over ownership of McCarthy Ford on June 25, it changed numerous terms and conditions of employment without any notification to or bargaining with the Union. Prior to the September 6 start of contract negotiations, Zeigler North Riverside changed employees' payroll period from one to two weeks; reduced the paid time for completing a wheel alignment from 1.7 to 1 hours; and eliminated the use of seniority to determine employees' vacation time. Around the same time that negotiations began, the dealership began installing surveillance cameras throughout the property, including in technicians' service stalls. All of these topics were mandatory subjects of bargaining. See, e.g., *Columbia University,* 298 NLRB 941, 941 (1990) (wages); *S & I Transportation, Inc.*, 311 NLRB 1388, 1388 fn. 1 (1993) (pay periods); *Migali Industries, Inc.*, 285 NLRB 820, 825–826 (1987) (vacation scheduling); *Colgate Palmolive Co.,* 323 NLRB 515, 515 (1997) (installation of surveillance cameras). Zeigler North Riverside had no discussion about any of these mandatory subjects, save for the surveillance camera installation. After discovering the camera installation on his own during a visit to the dealership, Grasseschi submitted an information request to Hendricks. In his response, Hendricks conceded the cameras had been installed. He claimed initially it was in response to a vehicle being stolen, but then detailed how the company wanted video of incidents for numerous purposes including discipline of employees. Although he stated at the end of his response that Grasseschi should let him know if the Union cared to negotiate the topic, the cameras already had been installed at that point. In addition, when the Union brought up the topic at the November 29 negotiation session, Hendricks did not offer to bargain over the subject, but just told them to grieve it when an issue arose. Thus, Hendricks' offer to bargain in his November 20 response to the Union's information request was a fait accompli, because the decision to install the surveillance cameras had already been made and implemented. *Dorsey Trailers, Inc.*, 327 NLRB 835, 858–860 (1999).

As a perfectly-clear successor, Respondent Zeigler North Riverside was not free to unilaterally set or change technicians' initial terms and conditions of employment. Thus, it violated Section 8(a)(5) by making all of these unilateral changes.

V. DID THE RESPONDENTS REACH COMPLETE AGREEMENT WITH THE UNION ON A CONTRACT AND THEREAFTER UNLAWFULLY REFUSE TO EXECUTE IT?

The General Counsel's complaint alleges that, on December 6, both Respondents reached complete agreement with the Union on terms and conditions of employment to be incorporated in a collective-bargaining agreement. The complaint further alleges that, on December 10, the Union requested that the Respondents execute written contracts reflecting the agreement. Finally, the complaint alleges the Respondents, through Aaron Zeigler, violated Section 8(a)(5) by thereafter refusing to execute the agreements.

Section 8(d) of the Act obligates a party to a collective-bargaining agreement to execute, or assist in executing, a memorialized version of the agreement, if requested to do so by the other party. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). A collective-bargaining agreement is formed only after a "meeting of the minds" on all substantive issues and material terms of the contract. *Intermountain Rural Electric Assn.*, 309 NLRB 1189, 1192 (1992). The question is whether the parties intended to form a contract. *New Orleans Stevedoring Co.*, 308 NLRB 1076, 1081 (1992), enfd. 997 F.2d 881 (5th Cir. 1993). The General Counsel bears the burden of showing that the parties have reached the requisite "meeting of the minds." *Intermountain Rural Electric Assn., supra* at 1192.

I conclude the parties reached a meeting of the minds on a complete collective-bargaining agreement as of December 6. On November 29, the Union passed a proposal for each dealership addressing all of the remaining issues upon which the parties had not yet agreed. Those subjects were health insurance, retirement benefits/401(k), and wages. The proposals reflected the Respondents' last wage proposal and the Union's agreement to use Zeigler's health and retirement benefits. On December 3 and 5, Lessman asked Hendricks for responses on the proposals, so he could vote the contracts. On December 6, Hendricks sent an email to Lessman saying "TA on both." In doing so, Hendricks agreed to a complete contract and all the material terms therein. *New Orleans Stevedoring Co.*, supra at 1082 (employer's bargaining representative agreed to proposed contract when he told union representative it "looked okay to him"). On December 10, Lessman sent Hendricks the agreements and asked him to sign them. The same day, Aaron Zeigler refused to do so.

The Respondents offer no defense to the refusal-to-execute allegation in their brief, but Aaron Zeigler contemporaneously claimed to employees and the union representatives that he did not approve the contracts. This claim calls into question Hendricks' authority to bind the Respondents to the agreed-upon contract. The duty to bargain carries an obligation to appoint a negotiator with genuine authority to carry on meaningful bargaining regarding fundamental issues. *Mid-Wilshire Health Care Center*, 337 NLRB 72, 79 (2001). An agent assigned to negotiate a collective-bargaining agreement is clothed with "apparent authority to bind the principal in the absence of clear notice to the contrary." *Sands Hotel and Casino*, 324 NLRB 1101, 1108 (1997), enfd. 172 F.3d 57 (9th Cir. 1999). After Lessman submitted the Union's proposals on the remaining issues in dispute on November 29, Hendricks told him he had to get Aaron Zeigler's approval on them. Thus, Hendricks clearly and unambiguously gave notice of that requirement. Nonetheless, when Hendricks ultimately responded, "TA on both," he objectively conveyed that Aaron Zeigler had approved the proposals. At that time, Zeigler's approval of the proposals was the lone condition precedent to the Respondents agreeing to a complete contract. Implicit in Hendricks' "TA on both" comment agreeing to the

proposals was that Aaron Zeigler had approved them. Indeed, Hendricks himself appears to have acknowledged this fact in his communication with Lessman after the contracts were ratified. When Hendricks forwarded to Lessman the email from Aaron Zeigler saying he was not signing the contracts, Hendricks offered no explanation for the refusal. No logical explanation could be provided after Hendricks told Lessman he needed to get Zeigler's approval on the final proposals and then said, "TA on both."

Accordingly, the dealerships' refusal to execute the agreed-upon collective-bargaining agreements violated Section 8(a)(5).[48]

VI. DID RESPONDENT ZEIGLER NORTH RIVERSIDE ENGAGE IN OVERALL BAD-FAITH BARGAINING?

Finally, the General Counsel's complaint alleges that, from September 6, 2018 to December 6, 2018, Respondent Zeigler North Riverside engaged in overall bad-faith bargaining for an initial contract.

The duty to bargain in good faith under Section 8(d) of the Act requires both the employer and the union to negotiate with a "'sincere purpose to find a basis of agreement,'" *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984) (quoting *NLRB v. Herman Sausage Co.,* 275 F.2d 229, 231 (5th Cir. 1960)). Although the statute cannot compel a party to make a concession, an employer is, nonetheless, "'obliged to make *some* reasonable effort in *some* direction to compose his differences with the union, if [Section] 8(a)(5) is to be read as imposing any substantial obligation at all.'" Ibid. (quoting *NLRB v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 134–135 (1st Cir. 1953), cert. denied 346 U.S. 887 (1953)). (Emphasis in original.) In determining whether a party has violated its statutory obligation to bargain in good faith, the Board examines the totality of the party's conduct, both at and away from the bargaining table. *Public Service Co. of Oklahoma (PSO)*, 334 NLRB 487, 487 (2001), enfd. 318 F.3d 1173 (10th Cir. 2003); *Overnite Transportation Co.*, 296 NLRB 669, 671 (1989), enfd. 938 F.2d 815 (7th Cir. 1991). The Board considers several factors when evaluating a party's conduct for evidence of bad-faith bargaining. These include unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass the union, and failure to designate an agent with sufficient bargaining authority. *Atlanta Hilton & Tower*, supra at 1603.

Zeigler North Riverside did engage in conduct away from the bargaining table indicative of bad-faith bargaining. Almost immediately after it took over the dealership, Zeigler North Riverside made numerous unilateral changes to employees' working conditions which violated Section 8(a)(5). They included changing the payroll period from 1 to 2 weeks; reducing the amount of paid time to complete a wheel alignment; altering how vacation time was determined; and installing surveillance cameras. It dealt directly with certain employees by negotiating, to the exclusion of the Union, side deals enhancing their wages and benefits.[49] The dealership's supervisors also made repeated, unlawful threats to employees which violated Section 8(a)(1).

However, Hendricks' conduct at the bargaining table paints a different picture and reflects good-faith bargaining. The parties met 6 times from September 6 to December 6. On October 25, Hendricks agreed to merge the negotiations of the two dealerships, effectively reducing the amount of time needed to reach agreement on a contract for Zeigler North Riverside. He also tentatively agreed to the Union's initial wage proposal for technicians, which had been submitted on March 29 in negotiations for Zeigler Lincolnwood. On November 27, Hendricks proposed a different, higher wage scale ($3-per-hour increase) than had been tentatively agreed to during the prior session. In exchange, the Union agreed to the dealerships' proposals to use the Zeigler Auto Group health insurance and 401(k) plans. The exchange of higher wages for changes to the benefits plans is a classic example of good-faith negotiating. Moreover, during bargaining with Zeigler North Riverside, Hendricks responded in a timely fashion to the Union's information requests regarding payroll records, side deals, and surveillance cameras. As discussed above, the parties reached agreement on a complete contract on December 6.

The General Counsel argues that Zeigler North Riverside engaged in conduct at the table that is indicative of bad-faith bargaining, namely failing to cloak Hendricks with the authority to enter into a binding contract. I do not find merit to this argument. Hendricks was the lone negotiator for the dealerships. Once the negotiations expanded to include Zeigler North Riverside, Aaron Zeigler told Grasseschi on August 21 that all communication should be directed to Hendricks. On September 6, Hendricks confirmed to the union representatives he was the dealership's attorney and not to bother Aaron Zeigler with communications. From September 6 to December 6, Hendricks engaged in meaningful bargaining, including agreeing to the union's wage proposal, then offering even higher wages to entice the Union to agree to the dealership's health and retirement proposals. The only point at which he needed Aaron Zeigler's approval was to enter into the complete contract. An employer is not required to appoint an individual possessing final authority to enter into an agreement, as long as negotiations are not thereby stymied or inhibited. *Wycoff Steel*, 303 NLRB 517, 525 (1991). Having found that the parties reached agreement on a contract as of December 6, Hendricks' need to obtain Aaron Zeigler's approval did not stymie the negotiations. He communicated to Lessman on November 29 that Aaron Zeigler had to approve the Union's proposals, then got the approval and agreed to the contract 1 week later. Hendricks' conduct during the 3-month bargaining

[48] Both respondents also independently violated Sec. 8(a)(5), when Aaron Zeigler revoked union representatives' access to both dealerships on December 7. Prior to that date, the predecessor contracts granted the representatives access to the facilities for "adjusting complaints individually or collectively." In practice, the representatives were able to visit the common areas of the dealerships whenever they liked, without obtaining permission from management. Thus, when Aaron Zeigler banned the union representatives from ever visiting his dealerships again after Lessman told him they had reached binding contracts, Zeigler made an unlawful unilateral change. *Cadillac of Naperville, Inc.*, 368 NLRB No. 3, slip op. at 1 fn. 2, 22 (2019).

[49] The General Counsel's complaint does not allege Zeigler North Riverside's direct dealing as an independent violation of Sec. 8(a)(5), but includes direct dealing as one of the bases for establishing bad-faith bargaining.

period involving Zeigler North Riverside does not reflect someone intent on not reaching agreement. Bargaining was in good-faith up to the point that Zeigler refused to sign the agreement. The refusal to execute the contract violated the Act, but the General Counsel cannot use that violation as a bootstrap to establish bad-faith bargaining.

The General Counsel also states in conclusory fashion that Zeigler North Riverside's conduct at the table included presenting contract proposals as take-it or leave-it offers. I presume the argument is premised on Aaron Zeigler's desire not to continue the union's pension and health insurance plans or the base pay guarantee. I do not find the dealership's steadfast position in that regard to be indicative of bad-faith bargaining. *Atlanta Hilton and Tower*, 271 NLRB at 1603 (adamant insistence on a bargaining position is not of itself a refusal to bargain in good faith). Moreover, the dealerships ultimately increased their hourly wage proposal for technicians to obtain the Union's agreement to change to the Zeigler benefit plans.

Thus, all of Zeigler North Riverside's bad-faith conduct occurred away from the bargaining table. The Board is reluctant to find bad-faith bargaining based solely on conduct away from the table, where no evidence is presented that the conduct affected a party's conduct at the bargaining table. See, e.g., *River City Mechanical*, 289 NLRB 1503, 1505 (1988) (employer did not engage in bad-faith bargaining where its away-from-the table conduct included direct dealing and expressions of intent to go nonunion, but no evidence the conduct influenced the aims or attitudes of the employer at the table); *Litton Microwave*, 300 NLRB 324, 330 (1990) (unilateral changes and failure to grant a regularly provided wage increase did not support finding of bad-faith bargaining, because no link existed between the unlawful conduct and the negotiations). The necessary link is not established in this case. Almost all of Zeigler North Riverside's unilateral changes occurred when it took over the dealership, more than 2 months before negotiations began. None of the changes involved topics that were being discussed at the bargaining table. The side deals the dealership negotiated were with a handful of employees it wanted to retain, not an attempt to negotiate a different wage and benefit package for the entire unit away from the table. Finally, although certain of Zeigler's statements in his November 2018 meeting with employees suggested the dealership would not honor its bargaining obligations, Hendricks continued to negotiate with Lessman, and reached an agreement, thereafter.

For all these reasons, I conclude Respondent Zeigler North Riverside did not engage in bad-faith bargaining from September 6 to December 6 and recommend dismissal of this complaint allegation.[50]

CONCLUSIONS OF LAW

1. Respondents Zeigler Lincolnwood and Zeigler North Riverside are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is, and at all material times was, the exclusive collective-bargaining representative of the following appropriate unit at the Lincolnwood, Illinois facility of Zeigler Lincolnwood:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

4. The Union is, and at all material times was, the exclusive collective-bargaining representative of the following appropriate unit at the North Riverside, Illinois facility of Zeigler North Riverside:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

5. Respondent Zeigler Lincolnwood violated Section 8(a)(1) in August 2018 by telling employees it was no longer a union shop and they needed to get on board with that.

6. Respondent Zeigler North Riverside violated Section 8(a)(1) in the fall of 2018 by telling employees:

a. if they did not ratify Zeigler North Riverside's contract proposal, it would unilaterally implement the proposal and, if they went on strike, it would no longer talk to the Union and would replace the employees.

b. the Zeigler Lincolnwood dealership was no longer union, because the technicians voted the union out.

c. Zeigler North Riverside was going to be a nonunion shop moving forward, then offering employees enhanced benefits to stay.

7. Zeigler Lincolnwood violated Section 8(a)(3) by constructively discharging Mark Galuski and Carlos Martinez due to their union and protected concerted activity.

8. Respondent Zeigler Lincolnwood violated Section 8(a)(5) by implementing its last, best, and final offer and unilaterally changing employees' terms and conditions of employment about July 23, 2018, without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

9. Respondent Zeigler Lincolnwood violated Section 8(a)(5) in July 2018 by bypassing the Union and dealing directly with bargaining-unit employees when it entered into individual employment contracts with them.

10. Respondent Zeigler North Riverside violated Section 8(a)(5) in June and August 2018 by unilaterally changing employees' terms and conditions of employment, including their pay period, hours worked for wheel alignments, approval of vacation requests by seniority, and the installation of surveillance cameras, without providing the Union with notice of or an opportunity to bargain over the changes.

11. Respondent Zeigler Lincolnwood and Respondent Zeigler

[50] In its brief, the Respondents contend that my prehearing denial of their motion to bifurcate these cases was erroneous. For the reasons stated in my April 18, 2019 order, I affirm my prior ruling. (The order inadvertently was omitted from the record, so I now enter it to the General Counsel's formal papers as GC Exh. 1(ii).) In doing so, I emphasize the Respondents' continuing failure to identify any prejudice to the presentation of their defenses. I further note the Respondents did not call any witnesses at the hearing.

North Riverside violated Section 8(a)(5) and 8(d) on December 10, 2018, by refusing to execute written contracts, after the Union requested they do so, reflecting the complete agreements reached by the parties on December 6, 2018.

12. Respondent Zeigler Lincolnwood and Respondent Zeigler North Riverside violated Section 8(a)(5) on December 7, 2018, by unilaterally revoking the Union's access to both facilities going forward.

13. The above unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

14. Neither Respondent has violated the Act in any of the other manners alleged in the complaint.

REMEDY

Having found that Respondent Zeigler Lincolnwood and Respondent Zeigler North Riverside engaged in certain unfair labor practices, I find they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent Zeigler Lincolnwood violated Section 8(a)(3) by constructively discharging Mark Galuski and Carlos Martinez, I order it to offer them full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. I also order Zeigler Lincolnwood to make the employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Moreover, in accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), Zeigler Lincolnwood shall compensate the employees for their search-for-work and interim employment expenses, if any, regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Zeigler Lincolnwood also must remove from its files any references to the employees' unlawful discharges, and within 3 days thereafter, notify the employees in writing that this has been done and that the unlawful actions will not be used against them in any way.

Having found that Zeigler Lincolnwood violated Section 8(a)(5) by prematurely declaring impasse and unilaterally changing terms and conditions of employment for unit employees thereafter, I order it, on request, to bargain with the Union as the exclusive collective-bargaining representative of unit employees, before implementing any changes to their wages, hours, or other terms and conditions of employment. I also order it, upon request of the Union, to retroactively restore any unilaterally modified terms and conditions of employment, and rescind the unilateral changes it has made, until such time as Zeigler Lincolnwood and the Union reach an agreement for a new collective-bargaining agreement, or a lawful impasse based on good-faith negotiations. Zeigler Lincolnwood also must make whole the unit employees for any loss of wages or other benefits suffered as a result of the unilateral changes in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River*, supra.

With respect to its unilateral changes to unit employees' health insurance and retirement benefits, Zeigler Lincolnwood must make unit employees whole by making all payments missed, if any, to the union's welfare and pension funds since July 10, 2018, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, and due to the elimination of the unit employees' preexisting health care benefits through the union's welfare fund, Zeigler Lincolnwood shall restore, upon request of the Union, the preexisting health care benefits and reimburse unit employees for any expenses ensuing from its failure to make the fund benefit contributions and to continue the unit employees' preexisting healthcare coverage, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection*, supra, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River*, supra.

Having found that Zeigler North Riverside unilaterally changed terms and conditions of employment for unit employees, I order it, on request, to bargain with the Union as the exclusive collective-bargaining representative of unit employees before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees. I also order it, upon request of the Union, to retroactively restore any unilaterally modified terms and conditions of employment, and rescind the unilateral changes it has made. Zeigler North Riverside also must make whole the unit employees for any loss of wages or other benefits suffered as a result of the unilateral changes in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd.444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River*, supra.

Having found that Zeigler Lincolnwood and Zeigler North Riverside violated Section 8(a)(5) and 8(d) of the Act by failing and refusing to execute collective-bargaining agreements embodying the December 6, 2018 agreement reached with the Union, I shall order the Respondents to execute and implement the agreements and give retroactive effect to their terms. I shall also order Zeigler Lincolnwood and Zeigler North Riverside to make bargaining unit employees whole for any losses attributable to its failure to execute the agreements, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010).

For all backpay awards received by unit employees, I further order Zeigler Lincolnwood and Zeigler North Riverside to compensate the employees for any adverse tax consequences associated with receiving lump-sum backpay awards and to file with the Regional Director for Region 13 a report allocating the backpay award to the appropriate calendar year. See *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016).

Finally, having found that both Respondents unilaterally

changed the Union's access to their dealerships, I shall order them, upon request of the Union, to rescind the changes and restore the Union's access as it existed prior to December 7, 2018.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[51]

ORDER

Respondent Zeigler Lincolnwood d/b/a Zeigler Buick GMC of Lincolnwood & Cadillac of Lincolnwood, Lincolnwood, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees by telling them the dealership is no longer a union shop and to get on board with that.

(b) Constructively discharging employees due to their union or protected concerted activity.

(c) Implementing a last, best, and final contract offer and unilaterally changing employees' terms and conditions of employment, without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

(d) Bypassing the Union and dealing directly with bargaining-unit employees by entering into individual employment contracts with them.

(e) Refusing to execute a written contract, after the Union requested it do so, reflecting the complete collective-bargaining agreement reached by it and the Union.

(f) Unilaterally revoking the Union's access to the dealership.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Mark Galuski and Carlos Martinez reinstatement to their former positions or, if their jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or other rights or privileges previously enjoyed.

(b) Make Mark Galuski and Carlos Martinez whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful constructive discharges of Mark Galuski and Carlos Martinez and, within 3 days thereafter, notify them in writing that this has been done and that these unlawful acts will not be used against them in any way.

(d) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit, before implementing any changes to their wages, hours, or other terms and conditions of employment:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

(e) At the Union's request, restore all terms and conditions of employment for unit employees which existed prior to the implementation of the last, best, and final offer about July 23, 2018, and continue them in effect until the parties either reach an agreement or a good-faith impasse in bargaining. Nothing in this Order is to be construed as requiring Respondent Zeigler Lincolnwood to cancel any unilateral changes which benefited the unit employees, without a request from the Union.

(f) Make whole the unit employees for any losses suffered by reason of the unlawful changes in terms and conditions of employment, on about or after July 23, 2018, with interest, in the manner set forth in the remedy section of this decision.

(g) Make all contractually-required contributions to the Union's welfare and pension funds that it has failed to make since about July 23, 2018, if any, and reimburse affected employees for any expenses ensuing from its failure to make the required payments, with interest, as set forth in the remedy section of this decision.

(h) At the Union's request, execute the contract which was reached between Zeigler Lincolnwood and the Union on December 6, 2018, and give retroactive effect to its terms.

(i) Make all affected employees whole, with interest, in the manner set forth in the remedy section of this decision, for any loss of earnings or benefits resulting from the failure to sign and honor the collective-bargaining agreement reached with the Union on December 6, 2018.

(j) Restore the Union's access to Zeigler Lincolnwood which existed prior to the unilateral changes implemented on December 7, 2018.

(k) Compensate Mark Galuski, Carlos Martinez, and all other affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, allocating the backpay award to the appropriate calendar years for each affected employee.

(l) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(m) Within 14 days after service by the Region, post at its facility in Lincolnwood, Illinois, copies of the attached notice marked "Appendix A."[52] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Zeigler Lincolnwood's authorized representative, shall be posted by Zeigler Lincolnwood and maintained for 60 days in

[51] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[52] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if Zeigler Lincolnwood customarily communicates with its employees by such means. Reasonable steps shall be taken by Zeigler Lincolnwood to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Zeigler Lincolnwood has gone out of business or closed the facilities involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Zeigler Lincolnwood at any time since July 20, 2018.

(n) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps the Respondent has taken to comply.

Respondent Zeigler North Riverside, LLC d/b/a Zeigler Ford of North Riverside of North Riverside, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees by telling them:

i. if they did not ratify the dealership's contract proposal, it would unilaterally implement the proposal and, if they went on strike, it would no longer talk to the Union and would replace the employees.

ii. the Zeigler Lincolnwood dealership was no longer union, because the technicians voted the union out.

iii. the dealership was going to be a nonunion shop moving forward, then offering employees enhanced benefits to stay.

(b) Unilaterally changing unit employees' terms and conditions of employment, without providing the Union with notice of and the opportunity to bargain over the changes.

(c) Refusing to execute a written contract, after the Union requested it do so, reflecting the complete collective-bargaining agreement reached by it and the Union.

(d) Unilaterally revoking the Union's access to the dealership.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit before implementing any changes to their wages, hours, or other terms and conditions of employment:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

(b) At the Union's request, rescind the unilateral changes made to the terms and conditions of employment for unit employees, including to their pay period, hours worked for wheel alignments, approval of vacation requests by seniority, and the installation of surveillance cameras.

(c) Make whole the unit employees for any losses suffered by reason of the unlawful changes in terms and conditions of employment, on or after June 25, 2018, with interest, in the manner set forth in the remedy section of this decision.

(d) At the Union's request, execute the contract which was reached between Zeigler North Riverside and the Union on December 6, 2018, and give retroactive effect to its terms.

(e) Make all affected employees whole, with interest, in the manner set forth in the remedy section of this decision, for any loss of earnings or benefits resulting from the failure to sign and honor the collective-bargaining agreement reached with the Union on December 6, 2018.

(f) Restore the Union's access to Zeigler Lincolnwood which existed prior to the unilateral changes implemented on December 7, 2018.

(g) Compensate all affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, allocating the backpay award to the appropriate calendar years for each affected employee.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility in North Riverside, Illinois, copies of the attached notice marked "Appendix B."[53] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Respondent Zeigler North Riverside's authorized representative, shall be posted by Respondent Zeigler North Riverside and maintained for 60 days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if Respondent Zeigler North Riverside customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent Zeigler North Riverside to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Zeigler North Riverside has gone out of business or closed the facilities involved in these proceedings, Respondent Zeigler North Riverside shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Zeigler North Riverside at any time since June 25, 2018.

[53] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps Respondent Zeigler North Riverside has taken to comply.

Dated, Washington, D.C., September 5, 2019

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees by telling them the dealership is no longer a union shop and to get on board with that.

WE WILL NOT constructively discharge employees due to their union or protected concerted activity.

WE WILL NOT implement a last, best, and final contract offer and unilaterally change employees' terms and conditions of employment, without first bargaining with Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL–CIO (the Union) to an overall good-faith impasse for a collective-bargaining agreement.

WE WILL NOT bypass the Union and deal directly with bargaining-unit employees by entering into individual employment contracts with them.

WE WILL NOT refuse to execute a written contract, after the Union requested we do so, reflecting the complete collective-bargaining agreement reached by us and the Union.

WE WILL NOT unilaterally revoke the Union's access to the dealership.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Mark Galuski and Carlos Martinez immediate and full reinstatement to their former positions or, if their jobs no longer exist, to a substantially equivalent position, without prejudice to their seniority or other rights or privileges they previously enjoyed.

WE WILL make Mark Galuski and Carlos Martinez whole for any loss of earnings and other benefits suffered as a result of our constructive discharges of them.

WE WILL remove from our files all references to the unlawful constructive discharges of Mark Galuski and Carlos Martinez and, WE WILL notify them in writing that this has been done and that these unlawful acts will not be used against them in any way.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following, appropriate bargaining unit, before implementing any changes to your wages, hours, or other terms and conditions of employment:

> All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

WE WILL, on request, restore all terms and conditions of employment for unit employees which existed prior to our unlawful implementation of the last, best, and final offer about July 23, 2018, and continue them in effect until the parties either reach an agreement or a good-faith impasse in bargaining. However, nothing in this Notice will be construed as requiring us to cancel any unilateral changes that benefited you, without a request from the Union.

WE WILL make you whole, with interest, for any losses suffered by reason of our unlawful changes in your terms and conditions of employment about July 23, 2018.

WE WILL make all contractually-required contributions to fringe benefit funds (welfare and pension) that we failed to make since about July 23, 2018, if any, and reimburse affected employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL, on request by the Union, execute the contract upon which we reached agreement with the Union on December 6, 2018 and give retroactive effect to its terms.

WE WILL make all affected employees whole, with interest, for any loss of earnings or benefits resulting from the failure to sign and honor the collective-bargaining agreement reached with the Union on December 6, 2018.

WE WILL restore the Union's access to Zeigler Lincolnwood which existed prior to our unlawful unilateral changes implemented on December 7, 2018.

ZEIGLER LINCOLNWOOD

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-225984 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees by telling them:

- if they did not ratify our contract proposal, we would unilaterally implement the proposal and, if they went on strike, we would no longer talk to the union and would replace the employees.
- the Zeigler Lincolnwood dealership was no longer union, because the technicians voted the union out.
- we were going to be a nonunion shop moving forward, and then offering employees enhanced benefits to stay at our dealership.

WE WILL NOT unilaterally change employees' wages, hours, or other terms and conditions of employment, without first providing notice of and an opportunity to bargain over the changes to Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL–CIO (the Union).

WE WILL NOT refuse to execute a written contract, after the Union requested we do so, reflecting the complete collective-bargaining agreement reached by us and the Union.

WE WILL NOT unilaterally revoke the Union's access to the dealership.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit, before implementing any changes to your wages, hours, or other terms and conditions of employment:

All full-time and regular part-time Journeyman Technicians, Body Shop Technicians, apprentices, lube rack technicians, part time express team technicians and semi-skilled technicians.

WE WILL, on request, cancel and rescind all the unilateral changes we made to your terms and conditions of employment on or after June 25, 2018, including to your pay period, hours worked for wheel alignments, approval of vacation requests by seniority, and the installation of surveillance cameras. However, nothing in this notice is to be construed as requiring us to cancel any unilateral changes that benefited you, without a request from the Union.

WE WILL make you whole, with interest, for any losses you suffered by reason of the unlawful changes in terms and conditions of employment we made on or after June 25, 2018.

WE WILL, on request by the Union, forthwith execute the contract upon which we reached agreement with the Union on December 6, 2018 and give retroactive effect to its terms.

WE WILL make all affected employees whole, with interest, for any loss of earnings or benefits resulting from our failure to sign and honor the collective-bargaining agreement reached with the Union on December 6, 2018.

WE WILL restore the Union's access to Zeigler North Riverside which existed prior to our unlawful unilateral changes implemented on December 7, 2018.

ZEIGLER NORTH RIVERSIDE, LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-225984 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.